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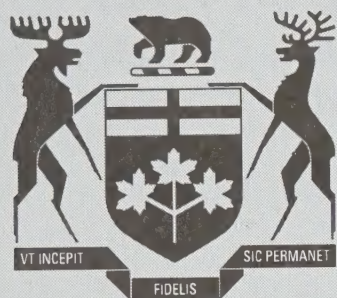
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REPORT OF THE SHIPPERWASH



Ontario

INQUIRY

VOLUME 4 Executive Summary

The Honourable Sidney B. Linden, Commissioner

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INVESTIGATION AND FINDINGS, VOLUME 1 – EXECUTIVE SUMMARY

Anthony O'Brien George, known as Dudley George, was an Aboriginal man whose parents, relatives, and ancestors were from the Stoney Point Reserve. He was thirty-eight years old. He and other First Nations men, women, and children occupied Ipperwash Provincial Park on Labour Day, September 4, 1995, primarily to protest the federal government's refusal to return the Stoney Point Reserve. The federal government had appropriated this reserve as a military training site in 1942 pursuant to the *War Measures Act* and had promised to return it to the Aboriginal people after World War II. But over fifty years had passed and the federal government had not returned the Stoney Point Reserve. Despite persistent attempts by the Aboriginal people to persuade the Canadian government to return its land, it had not done so. Frustration steadily increased for over five decades.

The occupation of Ipperwash Provincial Park by former residents of the Stoney Point Reserve, their descendants, and other First Nations people occurred in the early evening of September 4, 1995. Two days later, a confrontation occurred between the Ontario Provincial Police and the Aboriginal people outside the park. Dudley George was shot by the police and died.

Knowledge of the history of Kettle Point and Stoney Point is important to an understanding of the reasons the Aboriginal people decided to occupy Ipperwash Provincial Park.

HISTORY OF STONEY POINT AND KETTLE POINT

Both before and at the time of the British conquest of New France in the mid-eighteenth century, the ancestors of Kettle Point and Stoney Point were Anishnabek living in the area of Lake Huron and the River St. Clair. The British gave the Anishnabek people the name "Chippewas."

After the Seven Years' War with New France in 1760, the British Crown became concerned about its relationship with the Aboriginal people in this area. The British were intent on ensuring that the French remained out of this territory, and on securing control of the fur trade. In order to achieve these objectives, the British thought they should establish a co-operative and amicable relationship with First Nations people in the area.

In 1763, King George III made the protection of Aboriginal land an official Crown policy. He issued a Royal Proclamation, also known as the Indian Charter of Rights,¹ that established a territory beyond the settled colonies where land settlement was forbidden. This land had to be voluntarily ceded to the Crown before non-Aboriginal settlers could occupy it. The Proclamation was intended to impose the Crown between the settlers and the “Indians” in order to avoid exploitation. The area occupied by the ancestors of Kettle and Stoney Point lay within protected “Indian country.”

Expert witnesses at the Inquiry stressed the significance in Aboriginal history of the Royal Proclamation of 1763. The Royal Proclamation contains several important principles, the most fundamental of which is that First Nations people are to be treated with honour and justice.

Sir William Johnson of the British Indian Department was charged with the responsibility of circulating copies of the Royal Proclamation to the Aboriginal peoples in the Great Lakes area and of securing an alliance with the Anishnabek people. In 1764, he met with more than 1,500 Anishnabek Chiefs and warriors at Niagara Falls. The Treaty of Niagara was not written in alphabetic form; rather it was done according to Aboriginal protocol with the delivery of speeches and wampum belts. Sir William Johnson consummated the alliance with the Anishnabek with the delivery of two magnificent wampum belts accepted by the Aboriginal people. He offered the “Great Covenant Chain Belt” and the “Twenty-four Nations Belt” to the Anishnabek and promised they would not become impoverished and their lands would not be taken.

Both the British and the French were aware of the significance of burial grounds to the Anishnabek people. The Jesuits were also interested in the burial practices of the Anishnabek people and the attachment of the Living to the Dead. They learned of the continuing obligations on the Anishnabek people to care for their dead ancestors. For example, the Anishnabek people have obligations to feed and shelter the dead. There are very clear rituals regarding the graves, the location of the cemeteries, and the obligation of the Living to visit and Feast the Dead. From a young age, Aboriginal children are taught these rituals and responsibilities to their ancestors. Unfortunately, however, the English settlers in this area did not share the Anishnabek reverence for the gravesites. Aboriginal graves were robbed and burial sites were disturbed.

1 It is also referred to as the Magna Carta of the Indians of Canada.

Despite the promise of the British that the Anishnabek people would not become impoverished and their lands would not be taken, their lands were greatly diminished. In the Huron Tract Treaty in 1827, the Chippewas (the Anishnabek people) ceded 2.1 million acres of land to the Crown. The Chippewas relinquished 99 per cent of their traditional territory to the Crown and retained less than 1 per cent of their land.

After the Huron Tract Treaty was signed in 1827, the British Indian Department became more involved in the administration of Aboriginal communities. The Indian Department initiated a program to encourage the reserves to subdivide their land into separate lots. Individual families would be given a location ticket, which in essence was a permit to use a particular piece of land. The objective of this program was to encourage First Nations people to adopt an individualistic lifestyle and to farm — “basically to be like white people.” It was “an ambitious plan ... ‘to civilize the Indians,’ to get them to become sedentary, live in one place, become farmers, become Christians.” The Indian Department wanted Aboriginal people to relinquish their traditional way of life.²

The British Indian Department treated the Chippewas from the different reserves that had signed the Huron Tract Treaty as one large Band that had a shared interest in the four reserves – Walpole Island, Sarnia, Kettle Point, and Stoney Point.

In 1860, Walpole Island officially separated from the Band. Beginning in the 1880s, the people at Kettle Point and Stoney Point Reserves agitated to be separated from the Sarnia Reserve. The communities residing at the Kettle Point and Stoney Point Reserves were dissatisfied with the influence of the Sarnia Reserve. Sarnia had more than twice the population of the other reserves, and consequently had more power and influence in terms of decision-making. The Indian Superintendent was stationed in Sarnia, and all the Council meetings were held on the Sarnia Reserve.

After years of agitation and receiving petitions from the Aboriginal people, the federal Department of Indian Affairs finally agreed to divide the

2 This continued after Confederation. Like its predecessors, the Canadian government wanted First Nations people to assimilate into the population. Through federal legislation, the government devised social policies, economic development plans, and education systems intended to diminish Aboriginal rights for the purpose of assimilating the Aboriginal people. Through the Enfranchisement Act of 1869 and the Indian Acts in the 1870s and 1880s, the federal government sought to assimilate the First Nations people, with the hope that the Indians, as a distinct people, would disappear.

Kettle Point and Stoney Point Reserves from the Sarnia Reserve. The Department of Indian Affairs created two *Indian Act* bands: the Sarnia Band and the Kettle and Stony Point Band. The creation of these bands was formally approved by Order-in-Council on May 1, 1919.

There were land surrenders at the Kettle Point and Stoney Point Reserves. Beginning in 1912, the Aboriginal people were pressured to surrender the beachfront at the Kettle Point Reserve for recreational development and for settlement.

In 1927, local land developer MacKenzie Crawford told the Indian Agent that he wished to buy part of the beachfront at Kettle Point Reserve. Both the Indian Agent and the Department of Indian Affairs were favourably disposed to this land surrender that, in their view, had little value as it could not be used for agricultural purposes.

Of the thirty-nine Aboriginal people eligible to vote, twenty-seven voted in favour of the surrender. There was a protest against the surrender. The Aboriginal people argued that the vote was obtained through bribery and fraud. Despite these complaints and concerns, the Department of Indian Affairs proceeded with the surrender, approved by an Order-in-Council on May 11, 1927.

The shoreline at the Stoney Point Reserve was surrendered in 1928. Mr. Scott, a real estate developer and Sarnia politician, approached the Department of Indian Affairs as he wished to buy the entire beachfront at the Stoney Point Reserve. He needed a surrender of the land to the Crown in order to purchase this property.

The Aboriginal people were under extreme pressure from the Indian Agent to surrender the reserve land. The Chief of Kettle and Stony Point passed a resolution calling for Council to consider the application. The Band accepted the surrender, and 377 acres were taken. This constituted 14 per cent of the land and encompassed the entire beachfront of the Stoney Point Reserve.

Beginning in 1932, local residents pressured and petitioned the provincial government to create a public park at Stoney Point. Local residents were displeased that much of the beachfront on Lake Huron belonged to private owners with cottages on this property. Local residents agitated for beachfront accessible to the public. The provincial government's Department of Lands and Forests inspected the lots fronting Lake Huron and Stoney Point and concluded that of approximately 109 acres, one lot was suitable for such public purpose.

The province approached Mr. Scott and Mr. White, the individuals who bought 377 acres (four lots) in 1928 after the surrender of the Stoney Point Reserve land. In 1936, the Ontario government paid Mr. Scott and Mr. White \$10,000 for the one lot. The December 1936 Order-in-Council authorized the purchase and the establishment of the public park, which was governed by the *Provincial Parks Act*.

In 1937, a year after Ipperwash Provincial Park was created, the Chief and Council of the Kettle and Stony Point Band notified authorities of the existence of a burial ground in the park. The Band asked that this site be protected. No action was taken by the Ontario government to preserve or protect the burial sites.

Human remains were found in Ipperwash Provincial Park in 1950. The wife of the Park Superintendent took photographs of the burial site.

According to expert testimony at the Inquiry, there are no records to suggest that any steps were taken by the Ontario government before the 1990s to protect in any way the Aboriginal burial grounds described in the Kettle and Stony Point Band's request of 1937.

THE APPROPRIATION OF STONEY POINT RESERVE

During World War II, the Department of National Defence (DND) decided it wanted to establish an army training camp on the site of the Stoney Point Reserve. The Kettle and Stony Point Band people protested and made it clear they did not want to surrender the land at their reserve. They pointed to the Royal Proclamation of 1763 and King George's vow regarding the land: "expressly reserving to the said Nation of Indians and their Posterity at all times here after for their own exclusive use and enjoyment." In unequivocal terms, the Aboriginal people stated that they wanted to retain their reserve.

The deep connection of the Aboriginal people to this land was evident. Three generations of Aboriginal witnesses testified at the hearings that the Stoney Point Reserve was a self-sustaining Aboriginal community, a sharing community that operated to a great extent by consensus. Some of the Aboriginal witnesses were born on the reserve and spent some or all of their childhood at Stoney Point. Others had parents who spent many years living, working, and participating in communal activities on the Stoney Point Reserve before they were forced by the government to leave their land. A third generation, teenagers

and young children, learned about life at Stoney Point from accounts of their grandparents and parents, by visiting the land with their relatives, and by listening to the stories of their Elders.

These Aboriginal people had a great attachment to their land. Their reserve was self-sufficient — the land provided their food, medicine, and the necessary resources for their livelihoods. Stoney Point residents had a communal orientation; people on the reserve helped each other and shared resources.

Former Chief Bonnie Bressette³ discussed the separate identities of the Kettle Point and Stoney Point Reserves prior to 1942. They were two self-reliant communities, each with their unique attachment to the land on which they lived. Relations between the two communities were good. Representatives from each reserve met regularly to discuss matters of joint interest. Aboriginal people who lived at Stoney Point and at Kettle Point operated on the Anishnabek principle of consensus.

It was evident from the three generations of Aboriginal witnesses who testified at the Inquiry that the Stoney Point people have a deep emotional and spiritual attachment to their reserve. They believe the Creator placed them on that land with the lakes, the bush, and plants necessary to provide food, shelter, and medicine. They also have a deep connection to the gravesites where their ancestors were buried.

Despite the protests by the Kettle and Stony Point Band, the Indian Agent called a surrender vote on April 1, 1942. At the beginning of the meeting, the Chief and Council announced their opposition to the surrender. Of the eighty-three eligible voters, seventy-two attended the meeting, and fifty-nine voted against the surrender. The Aboriginal people were clearly not interested in either selling or leasing the Stoney Point Reserve. Despite the decisive vote by the Stoney Point people, the government pursued its plan to take over the Stoney Point Reserve.

Two weeks after the surrender vote, Privy Council Order 2913 authorized the appropriation pursuant to the *War Measures Act*. The April 14, 1942, Order-in-Council stipulated that the Department of National Defence required the 2,240-acre Stoney Point Reserve as an advanced military training centre. The Order-in-Council acknowledged that the Indian Band voted against the government proposal. The Order-in-Council explicitly stated that if the

3 Bonnie Bressette was the Chief of the Kettle and Stony Point First Nation from 1988 to 1990. She has been a Band Councillor since 1968.

Department of National Defence did not require the reserve property after the war, negotiations would be entered into to return the land to the Indians at a fair price.

The decision to displace First Nations people and move them from the Stoney Point Reserve to the Kettle Point Reserve met with continued opposition. A lawyer was retained to dispute the acquisition of the reserve. Letters were sent to the Department of Indian Affairs soon after the invocation of the *War Measures Act*, but it was clear that the government had no intention of halting its plan to set up a military camp at the Stoney Point Reserve.

In an April 24, 1942 letter to the Indian Affairs Department, Mrs. Beattie Greenbird, an older Stoney Point resident, stressed the treaties and undertakings made by the British and Canadian governments. She said that the reserve was promised to the Band for posterity and she referenced the Treaty of 1827. She also complained that the Band's young men were fighting in the war while the government was in the process of selling their land.

Many people from the Kettle and Stony Point Band were firmly convinced that it was not necessary for the Department of National Defence to use their particular land as a training camp. Other properties in the area were equally suitable for the military's needs. Residents of the reserve believed the federal government paid little attention to the spiritual attachment and economic dependency of the Stoney Point people to this land.

Despite the Kettle and Stony Point Band's opposition and their vote that clearly indicated the Aboriginal people did not want to leave their land, the federal government compelled the Stoney Point people to relocate in spring 1942. The Canadian government told the Aboriginal people that the land would be returned and that their relocation would only be temporary.

The forced relocation of the Stoney Point people by the federal government was devastating. Aboriginal witnesses described the emotional turmoil of their forced relocation, the loss of their livelihoods and self-sufficiency, and the friction that resulted between the Aboriginal people in Kettle Point and Stoney Point.

The emotional and physical upheaval of that spring day in 1942 when the Stoney Point people were evicted from their land is firmly embedded in their memories. Some homes were bulldozed and others were placed on blocks and moved. The move took place during the day, and Aboriginal people returned from work to find their reserve abandoned, their homes destroyed, and their belongings broken.

People received paltry sums for the relocation. The land at Kettle Point to which people were transplanted was much smaller in size and lacked the resources necessary to sustain families.

Aboriginal soldiers from the Stoney Point Reserve returned from serving in the Canadian military to find their homes and community had disappeared. Elderly members of the Stoney Point Reserve found the relocation a tumultuous experience that affected them emotionally and physically. The Stoney Point people struggled economically to sustain themselves on the small parcels of land they were compelled to move to at Kettle Point. The transplantation of people from the Stoney Point Reserve to Kettle Point created tension between the two communities.

Upon their return from military service in World War II, Aboriginal soldiers from the Stoney Point Reserve were greatly affected by the disappearance of their homes and their community. They had witnessed severely and fatally wounded soldiers and civilians in Europe, and they had endured difficult physical conditions. They very much needed the comfort and support of their community to help them recuperate from the horrors of war. Yet they returned to find army barracks in place of their homes on the reserve, and the dislocation of their parents, siblings, friends, and Elders. Reserve members struggled to adjust, emotionally and economically, to the forced relocation.

The Stoney Point people were devastated that their reserve's gravesites and burial grounds were not protected as the Canadian government had promised. When the Aboriginal soldiers returned, they were shocked to see the desecration of the Stoney Point cemetery. The military's disrespect and insensitivity to these sacred sites deeply affected the Aboriginal people.

The impact of the appropriation on the Kettle and Stony Point Band was significant. The acreage had been reduced from 5,096 acres at the time of the Treaty to just over 2,000 acres. Moreover, the population had greatly increased.

The divisions caused by the federal government's forced relocation in 1942 continue to permeate the Kettle and Stony Point Band. The impact of the appropriation on the Band remains significant.

Former residents of the Stoney Point Reserve expected that the federal government would return the land at Camp Ipperwash shortly after the war. But this did not occur.

There were several attempts by the Aboriginal people over the decades to negotiate the return of the Stoney Point Reserve, but the Department of National Defence did not vacillate from its position that it needed the camp for military training. The military made it clear that the land would not be returned in the foreseeable future. It was predominantly used as a camp for cadet training.

After the war, both the Department of National Health and Welfare and the Indian Affairs Branch also pressured the Department of National Defence to take measures to protect the cemetery at the former Stoney Point Reserve.

In a 1947 letter, the Department of National Health and Welfare discusses the removal of tombstones and the presence of gunshots in the remaining few tombstones. The poor maintenance of the cemetery area is described, as well as the deep concern of Stoney Point people for the “vandalism and disrespect” of their sacred site. The federal government’s responsibility to the Aboriginal people, whose military activities were likely responsible for some of the damage, was stressed. Representatives of the Department of National Health and Welfare were shown the cemetery by Robert George, and they described their observations and urged attention to this issue of great importance to Aboriginal people.

In the early 1970s, Jean Chrétien, then Minister of Indian Affairs, made a concerted effort to push the Department of National Defence to return the Stoney Point Reserve to the Aboriginal people. Contrary to Mr. Chrétien’s expectations, the Department of National Defence did not appear interested in resolving this issue.

In an exasperated letter to the Minister of Defence in 1972, Mr. Chrétien discussed the federal government’s moral responsibility to these Aboriginal people. He states that for twenty-six years, attempts had been made by the Department of Indian Affairs to address this issue with the Department of National Defence, which had not met with any success.

But no action was initiated by the federal government regarding the return of Camp Ipperwash.

After decades of growing frustration and attempts to persuade the federal government to return their reserve, former residents of the Stoney Point Reserve and their descendants decided to occupy the military ranges of Camp Ipperwash in May 1993.

THE MAY 1993 OCCUPATION AT CAMP IPPERWASH OF THE MILITARY RANGES AND THE JULY 1995 OCCUPATION OF THE ARMY CAMP

In May 1993, a group of Stoney Point people peacefully occupied the military ranges at Camp Ipperwash. They entered the army camp through the main gate to the built-up area, with tents and a trailer. Some members of the group took up residence indefinitely. No police were present. The purposes of the occupation were to reclaim the land and to get the negotiations moving again. The mood amongst the Aboriginal group was jubilant; people were overjoyed to be back on their land.

In summer 1993, the Stoney Point people planted a peace tree, and held a ceremony to “bury the hatchet,” which signified that no weapons would be used in reclaiming the land and that it would be peaceful. They lit a sacred fire where people gathered to share stories, knowledge, documents, and memories about the area and the occupation. Marcia Simon taught some of the young people about the traditions, language, and history of the Anishnabek people.

There was some tension between the occupiers and the military following the occupation of the ranges. Incidents that highlighted the tension between the Stoney Point people and the military were an incident involving an occupier’s dwelling and possessions in August 1993, and the shooting of a military helicopter on August 23, 1993. One occupier described their relationship with the military between May 1993 and July 1995 as “one of taunting each other. Kind of like neighbours bickering at each other all the time.”

Members of the Stoney Point group persisted in their efforts for the return of their land; they marched to Ottawa in September 1993, and remained on the lands through the difficult winters. In February 1994, the Department of National Defence announced that Camp Ipperwash would be closed and that the land would subsequently be returned to the Kettle and Stony Point First Nation. However, the military did not relinquish the land to the Aboriginal people.

In March 1994, a tribute was held by the Stoney Point people to honour Clifford George and Dudley George as nation-builders following their difficult winter on the land at the military range.

In 1995, the frustration of the occupiers increased because of the military’s persistence in remaining on the land. In the summer, the military planned to remove all equipment and other assets from Ipperwash by July 17, 1995. But military personnel and equipment remained at the army camp on July 28, 1995.

At the end of July 1995, the Stoney Point people decided it was time to reclaim the land at the army barracks. The July 29 occupation of the army barracks at Camp Ipperwash was not impulsive. First Nations people discussed in advance the reasons they believed it was time to take over the built-up area, that is, the living quarters and administrative buildings used by the military. They also planned the way in which the occupation would be executed.

The Aboriginal people were exasperated with the futility of their attempts at the return of the Stoney Point Reserve. Letter-writing campaigns and other attempts to negotiate with the federal government had been unsuccessful. The Aboriginal people were frustrated with the federal government's lack of interest, attention, and what they perceived to be the lack of goodwill in fulfilling the 1942 promise to return their land after World War II.

The Stoney Point people were also exasperated at the taunting and constant altercations with military personnel since the occupation of the military range in 1993. Tension was escalating between the soldiers and the Aboriginal people. There was antagonism on both sides.

A further reason for the decision to occupy the army barracks was to move into warmer shelters before the fall and winter as the weather became colder. The occupiers of the rifle range did not have adequate facilities to endure the winter months. There was particular concern that the Elders should have warmer accommodations as the temperatures dropped in the late months of 1995. Clifford George, at the age of seventy-three, was one of the Elders who had lived on the ranges at Camp Ipperwash throughout the winters.

There was also frustration that the federal government was only interested in communicating with the Kettle and Stony Point Band. The government refused to initiate discussions with the occupiers, many of whom were descendants of former residents of the Stoney Point Reserve appropriated by the Department of National Defence in 1942.

First Nations people both within and outside of the community actively supported the occupation because they firmly believed the land belonged to the Stoney Point people — it was time to take it back from the federal government.

In the early afternoon of July 29, 1995, First Nations people entered the military camp from different locations. Fifteen-year-old Harley George drove a yellow school bus owned by his father toward the north side of the built-up area. There were about ten boys on the bus as passengers. The bus was a “diversion,” according to the plan. While the bus carrying the First Nations children entered an area patrolled by the military, Aboriginal men, women, and

Elders drove into the built-up area from other locations of the military camp.

As the school bus approached the north side of the built-up area, a gate obstructed their way. Harley George turned the bus around, backed through the gate, broke the chain lock, and proceeded to the Parade Square at Camp Ipperwash. He pulled up to the door of the Drill Hall and began to push it with the bus. He then backed the bus up into a military jeep, pushing it for about forty to forty-five feet. An altercation ensued and the military police sprayed Harley George in the face with pepper spray. Another Aboriginal person drove a fork-lift that belonged to the military through the doors of the Drill Hall.

The military at Camp Ipperwash had no advance notice that the First Nations people would try to assume control of the army camp. It quickly became apparent to Base Commander Captain Smith that he “would not be able to hold the base” — things were “chaotic” and “mini-confrontations” were occurring “all over” the base.

Captain Smith contacted Robert Antone, a First Nations negotiator trained in conflict resolution and crisis management. He had been involved in the 1990 Oka crisis in Quebec. He and Bruce Elijah had facilitated a cross-cultural awareness training session with the military on July 12 and 13, 1995 in an attempt to build a relationship between the Stoney Point people occupying the range and the military. Bruce Elijah was also a First Nations negotiator as well as a peacekeeper from the Oneida First Nation.

After speaking with the occupiers, it became clear to Mr. Antone and Mr. Elijah that the First Nations people were not likely to leave the camp, and the only solution for the military was to “force them out.” Captain Smith made it clear that he did not want to be involved in a physical confrontation with First Nations people.

With the assistance of Mr. Antone and Mr. Elijah, the military left the army camp at about 11:30 p.m. on July 29. Thirty to forty military personnel left from the main gate of the camp in military and private vehicles, and Captain Smith was the last to leave. The Department of National Defence made no attempt to re-enter the built-up area after the July 29, 1995 occupation. Several Aboriginal people took up residence in the army camp on July 29 and the days following.

The OPP arranged for twelve Emergency Response Team (ERT) officers to travel to the area. Inspector John Carson assigned four OPP officers to Ipperwash Park disguised as campers.

Uniformed ERT officers were also deployed to Ipperwash Park and the area surrounding Camp Ipperwash.

Members of the OPP, as well as members of the Kettle and Stony Point Band, were concerned that First Nations people from other reserves and areas were in the army camp. Aboriginal people from Oneida, Walpole Island, and Moraviantown came to offer support, as did people from Michigan and other areas in the United States.

Two days after the takeover of the army camp, Julie Jai, Acting Legal Director of the Ontario Native Affairs Secretariat (ONAS),⁴ convened an Interministerial Committee (IMC) meeting on Aboriginal Emergencies. Ms. Jai learned that the Aboriginal occupiers claimed a sacred site existed in the provincial park. She also learned that the Aboriginal people had future plans to assume control of the provincial park.

The August 2 Interministerial Committee meeting on ‘Aboriginal Emergencies: Ipperwash Park’ was the first IMC meeting chaired by Julie Jai. The purpose of the meeting was to gather information and develop recommendations on the Camp Ipperwash takeover by the Stoney Point group, as well as to discuss the possibility of this group occupying Ipperwash Provincial Park.

At the close of the meeting, IMC members agreed to keep in close communication and apprise one another of further developments. As described by one government lawyer, “it was a watch and see outcome.” It was agreed that the IMC would “not really do anything” for what was perceived to be a low-risk situation.

IMC members came away from the meeting feeling that the federal government’s inaction in returning the Stoney Point Reserve was responsible for many of the actions of First Nations people. As one government official said, “... it was our understanding that the dithering by the Federal Government was creating a problem with respect to the [camp] and that ... the Native community in the area was frustrated by the lack of action with regard to the transfer of the [camp] to the rightful owners.” Several IMC members were of the understanding that “Stoney Pointers had valid title to the Camp and that the only issue in dispute was timing ... the issue holding up the transfer was the Federal Government’s unwillingness.” Participants at the meeting did not believe these issues concerned the provincial government.

4 The Ontario Native Affairs Secretariat was part of the Ministry of the Attorney General.

It is significant that the claim by First Nations people that a burial ground existed in the park was not discussed at the IMC meeting. Ms. Jai, Chair of the IMC, did not take any measures after August 2 to research the allegation that sacred sites existed in the provincial park: “[T]he decision was just to not really do anything, just to monitor the situation until the park was actually occupied.”

The prospect of appointing a third-party intervener, facilitator, or negotiator was also not explored at the IMC meeting. Yet many IMC committee members understood that developing a trust relationship with Aboriginal people is fundamental to defusing conflict.

In my view, appointing a third-party — an intervener, facilitator, negotiator, or the Indian Commission of Ontario — to determine the concerns of First Nations people in the Ipperwash area might have defused the tension and perhaps would have averted some of the issues that were to emerge in the occupation of Ipperwash Park the following month.

It is noteworthy that federal government representation was absent from the August 2 Interministerial Committee meeting. The IMC Guidelines for Responding to Aboriginal Emergencies clearly stated that the Committee can be “augmented by representatives from ... federal departments” such as “Indian and Northern Affairs Canada.” In developing the first line of governmental response, it would have been helpful for the IMC and other government and political staff to discuss the federal government’s intentions with respect to Camp Ipperwash. Clearly the participation of the Department of Indian and Northern Affairs would have provided insight to IMC members of the historical concerns of the Stoney Point people and would have assisted them in their deliberations and possible recommendations to the ministries involved.

In late July and early August, Premier Harris and the Cabinet Ministers were apprised of the army camp occupation. As was the case with the Ministries of the Solicitor General and Natural Resources, the Premier and his staff did not devote much attention to the occupation of the army camp. Although Premier Harris was aware of the occupation, “it was not an issue that was of a high priority” for him or his government; “it was viewed primarily as a federal issue.”

THE OPP PREPARE FOR THE OCCUPATION OF IPPERWASH PROVINCIAL PARK

In August 1995, the OPP began to prepare for the occupation of Ipperwash Provincial Park. Undercover police officers were in Ipperwash Park during the

month of August. Inspector Carson heard further confirmation on August 16 that the Aboriginal people planned to assume control of the park. Bert Manning had advised OPP officers that the park would belong to them after Labour Day. The OPP had also received information that Glenn George had announced that Ipperwash Park would belong to the occupiers after Labour Day. Statements to this effect had been made to the police after the takeover of the army camp at the end of July 1995. There now appeared to be a concrete time frame for the proposed action of the Aboriginal people.

Tension between members of the Kettle and Stony Point Band and the occupiers at the army camp was escalating. Band members felt the negotiations with the federal government had waned because of the army camp occupation that summer. The occupiers of the army camp were equally upset that the federal government was not negotiating with them directly for the return of their reserve.

A meeting of senior OPP officials took place on August 28. Some of the officials who attended the meeting included Chief Superintendent Coles, Superintendent Parkin, Inspector Carson, Inspector Hutchinson, and Acting Sergeant Ken Deane. Possible tactics with regard to the Ipperwash Park occupation were discussed. It was suggested that the ERT (Emergency Response Teams) and TRU (Tactics and Rescue Unit) be lined up as part of the logistical planning. The use of a mobile command unit and the location of the command post were also discussed. It was decided that Incident Commander John Carson would lead a planning session at OPP District Headquarters in London.

Present at the meeting in London the following day were A/D/S/Sgt. Wright, Acting Sergeant Deane, Sergeant Korosec, and Sergeant Grant. Various scenarios with regard to the occupation of Ipperwash Provincial Park were discussed. The purpose of the meeting was to devise strategies for this impending occupation, expected to occur after Labour Day weekend.

They discussed the possibility of TRU being stationed at Pinery Park, and for police boats to patrol the waters outside Ipperwash Park. They also contemplated the use of armoured vehicles for defensive purposes. Inspector Carson explained that an OPP command trailer would be moved to Forest from London.

The roles of the various OPP units involved — ERT, TRU, negotiators, criminal investigators — were discussed and a chart was developed of the tasks to which each would be assigned. This organizational chart was ultimately incorporated into Project Maple.

On September 1, the Friday of Labour Day weekend, Inspector Carson convened another meeting to develop Project Maple. Inspector Carson invited

about twenty officers, each of whom was on an assigned team, to develop options in their particular areas of expertise. Inspector Carson made it clear that the objective of Project Maple was “to contain and negotiate a peaceful resolution.”

It was decided at the meeting that First Nations people who tried to enter the park would be told by Ministry of Natural Resources (MNR) representatives and then by the OPP that they were trespassing. If they refused to leave the park site, MNR would make preparations to seek a court injunction. It was made clear at the meeting that in the past, there had “never been any situation where the OPP have been challenged with a firearm” by these Aboriginal people. There had not been one incident between OPP officers and Aboriginal people occupying the military range since 1993, and the army camp since 1995, that involved guns. Inspector Carson did not believe the Stoney Point people would use firearms against the OPP officers.

An organizational chart of the officers’ various duties was finalized the next day. Inspector Carson was designated as the Incident Commander, with A/D/S/Sgt. Wright as the Assistant Commander. Sergeant Korosec was responsible for leading the ERT teams, and Acting Staff Sergeant Skinner was responsible for TRU. Intelligence was Detective Sergeant Bell’s responsibility, and Sergeant Seltzer was the leader of the Negotiation Teams.

Four ERT teams, each consisting of fifteen officers, were assigned to the Ipperwash area, a total of sixty ERT officers. It was decided that ERT officers would wear their grey uniforms and have “long guns” or rifles in the trunks of their vehicles. These were Mini Rugers, semi-automatic guns.

At the September 1 meeting, the officers discussed cohabitation, that is, the presence of ERT members in the park with the Aboriginal occupiers. Inspector Carson said, “[W]hen we approach the natives to leave, we always stay in their face.” It was the Incident Commander’s intention that, during cohabitation, officers would be physically close to the occupiers. He wanted the OPP to interact and communicate with the First Nations people in an attempt to keep the situation as calm as possible. Inspector Carson believed that there was less risk of harm if the officers engaged the Aboriginal people in dialogue.

There were several weaknesses in the Project Maple plan. The Negotiations Response Plan did not contain: (1) a communication strategy for important messages that ought to be conveyed to the occupiers; (2) the technical aspects of how the OPP would communicate with the occupiers, such as by megaphone or by pamphlet; or (3) specified people outside the OPP who could

communicate with the occupiers. This was a serious failing on the part of the OPP who did not, in advance of the impending occupation, compile a list of First Nations negotiators, such as Bruce Elijah, Robert Antone, or National Chief Ovide Mercredi—people who could possibly help resolve issues that could emerge in the Aboriginal occupation of Ipperwash Park. Nor were efforts made to prepare a list of respected and trusted people in the Ipperwash community, such as Elders or former Chief Bonnie Bressette, who could also possibly assist in resolving issues between the Aboriginal occupiers and the OPP and the MNR.

To exacerbate the situation, the head of the Negotiation Response Plan had no training in crisis negotiation in an occupation, no training in Aboriginal culture or history, nor was he aware of any protocols or policies to address this type of situation.

There were also several weaknesses in intelligence under Project Maple. The intelligence component was originally omitted from the organizational chart in Project Maple. On the Project Maple chart, it is clear that intelligence is an “add-on” or “afterthought.”

Intelligence had four functions in Project Maple: (1) to identify as many occupiers as possible; (2) to develop biographical profiles on those identified; (3) to attempt to identify visitors to the Ipperwash area; and (4) to collect, analyze, and disseminate all pertinent intelligence relating to this operation. Detective Sergeant Bell, according to Project Maple, was in charge of overall intelligence.

The intelligence unit was to report through Detective Sergeant Richardson, who in turn would communicate the intelligence to Inspector Carson. Instead of Bell as the head of the intelligence unit reporting directly to the Incident Commander, Detective Sergeant Bell reported to Detective Sergeant Richardson. But Detective Sergeant Richardson had no specialization as an intelligence officer.

The “classic” intelligence system was not put into place in Project Maple. In a standard operation, an Incident Commander relies on his or her intelligence team to provide a finished product in which raw data has gone through the intelligence cycle. Under the traditional model of intelligence, all raw data flows through the intelligence unit and then to the Incident Commander. This eliminates potential misinformation or unanalyzed information from being transmitted to the Incident Commander.

Another problem was that Inspector Carson did not have specific training in intelligence in 1995. Moreover, Inspector Carson said that he would not

make an operational decision based on intelligence. Intelligence clearly did not have a central role for the Incident Commander in Ipperwash. Training for intelligence operations was lacking, both for the Incident Commander and other senior OPP officers. It is important that the leader of the intelligence unit report directly to the Incident Commander. This was not the case in Project Maple.

FIRST NATIONS PEOPLE OCCUPY IPPERWASH PROVINCIAL PARK ON SEPTEMBER 4, 1995

On Monday, September 4, 1995, in early evening of Labour Day weekend, First Nations people entered Ipperwash Provincial Park. Their intention was to assert control over this land and occupy the park. The First Nations people who initially walked through the park gate included descendants of residents of the Stoney Point Reserve, people from Kettle Point, as well as supporters from other areas.

Adult men such as Dudley George, Marlin Simon, and David George, teenage boys such as Nicholas Cottrelle, Wesley George, and J.T. Cousins, and women such as Tina George and Carolyn George were among the people who first entered the park at approximately 7:30 p.m. When most campers had left the park for the day and for the season, Aboriginal people from other reserves and areas beyond Forest, including the United States, were also among the group who occupied the park.

The Aboriginal witnesses discussed the reasons they decided to occupy Ipperwash Provincial Park on September 4, 1995. They believed that the provincial parklands were part of Aazhoodena (Stoney Point), their traditional territory. There was belief that the Stoney Point people had a right to this land, and that historically the Indian Agent had not adequately represented the interests of residents on the original Stoney Point Reserve. Their grievances were directed both at the provincial and federal governments. They were also frustrated that the Stoney Point Reserve had not been returned after World War II as the federal government had promised in the 1940s and again in 1994.

Another reason for assuming control of the park was to protect the sacred burial sites in the park. Occupiers had been told by their respective grandparents that graves were in the park. The Aboriginal people were disturbed that the government had not taken measures to erect a fence around the gravesites in the park to ensure the sacred grounds were protected, maintained, and respected.

The occupiers who entered the park in the early evening of September 4 were of the conviction that the provincial park belonged to the Stoney Point people.

Aboriginal witnesses made it clear at the hearings that the process of regaining their land was moving much too slowly.

Prior to the occupation of the park on the afternoon of September 4, an altercation occurred between two Aboriginal men and the OPP. Stewart George abruptly opened a car door, which made contact with a police cruiser and caused minor damage. A heated exchange took place between Stewart George, Roderick George, and the OPP over the ownership of Matheson Drive.

In the early evening, at about 7:30 p.m., the First Nations people entered Ipperwash Park at the east gate. The chain and lock on the park gate were severed with bolt cutters. The OPP made no attempt to prevent the Aboriginal people from entering the provincial park. The OPP's plan was to cohabit or coexist with the First Nations people within the park boundaries. OPP officers asked the occupiers to allow them to evacuate the remaining campers in the park.

OPP officers remained in the park as night set in and it became dark. The First Nations people repeatedly asked the police to leave the park.

Just before 9:30 p.m., about two hours after the First Nations people entered the park, an altercation occurred. An Aboriginal person threw flares in the direction of the officers.

Roderick George approached the police with a three-foot stick in his hand. He was agitated, yelled profanities, and told the police to leave the park. Roderick George began a countdown for the police to get into their cars and leave what he considered to be First Nations property. Tension was "high" and "escalating." Roderick George swung his stick and smashed the rear window of a police cruiser.

After communicating with Inspector Carson, Sergeant Korosec instructed his officers to leave the park because he did not want anyone to be hurt.

Shortly after 11:00 p.m., the MNR and the OPP attempted to serve legal documents on the occupiers. Constable Vince George accompanied MNR Park Superintendent Les Kobayashi, and they were flanked by eight to ten ERT officers as they walked down the dark road to the park kiosk. The Aboriginal people refused to accept service of the documents. They ordered Constable George and the Park Superintendent to "get off their land," and said, "[W]e don't do business at night."

SEPTEMBER 5, 1995

It was evident to Inspector Carson on the morning of September 5, 1995, that Chief Tom Bressette of the Kettle and Stony Point Band did not support the occupation of Ipperwash Park. Chief Bressette confirmed there was no land claim by the Kettle and Stony Point Band on Ipperwash Park.

Throughout the day, First Nations people arrived at Ipperwash Park to support the occupation. They included Stoney Point people living at the army camp, residents of Kettle Point, and people from other reserves and communities such as Oneida, Walpole Island, and Chippewas of the Thames.

On September 5, Inspector Carson focused his efforts on ensuring the police could monitor the occupiers from the air by helicopter, from Lake Huron by boat, and in the dark with night vision goggles. The Incident Commander also spent a significant amount of time trying to arrange for the transportation of armoured vehicles to the Ipperwash area for defensive purposes.

In my view, an inordinate amount of time and effort was spent by the Incident Commander and other OPP officers on armoured vehicles, weapons, and other equipment. The Incident Commander himself spent too much time on logistical matters. This took valuable time away from important issues such as speaking to a negotiator to assist in the occupation, to determine ways in which the OPP could communicate their intention to the First Nations people, and to focus on intelligence to ensure that information received was verified before critical decisions were made by the Incident Commander.

OPP Superintendent Parkin made it clear to Inspector Carson on September 5 that he wanted an unrecorded private telephone line to discuss the Ipperwash occupation with the Incident Commander. This was despite the fact that Superintendent Parkin knew that for reasons of accountability, as well as to ensure accuracy of the record, operational discussions and decisions are to be taped.

In my view, it is important that communications from and to the command post be recorded during a police operation. Recording of telephone calls and other communications at the command post ensures transparency and accountability in police decision-making. It also provides valuable information to the OPP in its post-incident analysis of the police operation as well as for other bodies that may be involved in reviewing the incident. The request for an unrecorded line should not have been made at Ipperwash. The OPP should take measures to ensure that all telephone lines in the command post are recorded and stored permanently.

On September 5, local MPP Marcel Beaubien contacted OPP Staff Sergeant Lacroix to discuss his concerns about the Ipperwash Park occupation. Mr. Beaubien had known Staff Sergeant Lacroix for fifteen to twenty years, had sold him house insurance, and described him as a good acquaintance. It was evident to Staff Sergeant Lacroix from his discussion with the MPP on September 5 that Mr. Beaubien was “quite irate.” Staff Sergeant Lacroix conveyed the MPP’s concerns to Inspector Carson. At the command team briefing, Inspector Carson advised his senior officers that Staff Sergeant Lacroix had been in contact with local MPP Beaubien who was “updating the Premier on the situation.”

The Chief Administrative Officer of the Town of Bosanquet, Ken Williams, also contacted the OPP on the morning of September 5. He appeared at the OPP Forest Detachment to meet with Inspector Carson. The purpose of his visit was to convey the Mayor’s concerns about the occupation and to obtain an update on the OPP’s activities in the Ipperwash area.

Mayor Fred Thomas and the Town of Bosanquet issued a press release later that day. The language in this press release was aggressive, exaggerated, and hysterical. Entitled “Reign of Terror Continues,” the Mayor describes the First Nations occupiers as engaging in “terrorist” and “illegal activities.” He says residents are “terrified” and that there are “rumours that people are buying guns to protect themselves and their families.” Mayor Thomas was also critical of the OPP for not arresting these “Indians.”

In my opinion, this press release aggravated the situation and escalated the anxieties of local residents. The language in this public statement evoked fear and created further divisions between the Aboriginal people and the cottagers and residents in the Ipperwash area and the Town of Forest.

THE SEPTEMBER 5 INTERMINISTERIAL COMMITTEE MEETING

The Acting Legal Director of ONAS, Julie Jai, convened an IMC meeting on September 5 to address the Ipperwash Park occupation. Attendees of the meeting consisted of political staff and bureaucrats from various Ministries, such as the Attorney General, Natural Resources, the Solicitor General, as well as the Premier’s Office. There was tension between some of the political and civil servant staff. Several IMC participants subscribed to a patient, measured, careful, and slow response to the Ipperwash Park occupation while others, such

as the Premier's Executive Assistant Deb Hutton, had a "sense of urgency" and thought the government "should be doing more and doing it faster."

Ms. Hutton tried to convince IMC members that this was an urgent situation that required quick action. She made it clear that the government could not wait two weeks for an injunction. Deb Hutton also made it clear that "this government treats non-Aboriginal people and Aboriginal people the same." Several IMC members were unnerved by Ms. Hutton's comments. Ms. Hutton was perceived as the spokesperson for Premier Harris; she spoke with his authority.

It was clear to the participants at the meeting that this government was focused on quickly ending the occupation. Sworn in about ten weeks earlier, the new government wanted to focus their efforts on their 1995 campaign promises and did not want to be diverted by such issues as a First Nations park occupation. The government also wanted to convey to the public the message that it was addressing the occupation in a quick, strong manner.

The IMC, in my view, did not devote adequate time to a discussion of colour of right of the Aboriginal people, that is, the claim that the park was their land. This concept should have been fully explained to give all IMC members an understanding of the possible justification the Aboriginal people believed they had to be in Ipperwash Park. Despite the fact that several IMC members were aware the Committee had the power to appoint a facilitator or negotiator, this was not discussed at the meeting. Appointing a negotiator or facilitator was consistent with a "go-slow" measured approach to the occupation advocated by several IMC members, and it would improve the opportunities for a peaceful or non-violent resolution of the situation. However, it was not consistent with the law and order approach of political staff, such as Ms. Hutton.

Ministry representatives at the IMC meeting were asked if they had information related to a possible burial site in the park. At this time, both the federal and provincial governments had documents that indicated that First Nations people, as early as 1937, had asserted that burial grounds existed in the park and that they required protection. Yet political staff and civil servants at the IMC meeting were not aware of this information. They became aware of these documents a week after the death of Dudley George. Clearly it was important for the IMC to have this information in deliberating their recommendations to the government on how to handle the occupation. It would also have been helpful if federal representatives had been present at the September 5, 1995 IMC meeting.

At the conclusion of the IMC meeting, the Minister of Natural Resources, Chris Hodgson, was designated as the spokesperson for the short term. This direction came from Deb Hutton of the Premier's Office. MNR was instructed to inform the public that (1) the province has valid title to Ipperwash Park; (2) the occupiers have been told they are trespassing and have been asked to leave; and (3) the province will take steps to remove the occupiers as soon as possible.

After the IMC meeting, Ron Fox and OPP Inspector John Carson spoke about the IMC meeting and the progress of the injunction application. Ron Fox conveyed the Premier's views to Inspector Carson.

After this call, Inspector Carson met with his command team and shared some of the information imparted by Mr. Fox, including the "political heat" and the Premier's desire to get the Aboriginal people out of the park. Inspector Carson said the Premier had made it clear the Aboriginal occupiers should receive "no different treatment from anybody else."

OPP Commissioner O'Grady testified that the Premier's views were of no relevance to the Incident Commander. Although the OPP Commissioner believes that Inspector Carson was not influenced to change his approach to the occupation as a result of his knowledge of Premier Harris's views, the danger that arises is a possible perception that the Incident Commander was influenced by political pressure.

In my view, the Incident Commander should not have shared with his officers at Ipperwash the discussions he had had with Staff Sergeant Lacroix and Ron Fox about political pressures from Queen's Park or from local politicians such as Marcel Beaubien. It created the risk or the perception of risk that his officers would be influenced in their actions by the exasperation of Mr. Beaubien that the OPP were not taking sufficient action to end the occupation, or the view of the Premier and other political staff that the occupation should end as quickly as possible. Imparting this information to his officers could compromise the approach of the OPP to the First Nations protest, which was to take a measured response to the occupation. It could also frustrate the objectives of Project Maple, which were to negotiate and resolve peacefully the occupation of Ipperwash Park by the Aboriginal people.

Another problem was that the MNR Park Superintendent attended meetings at the OPP command post. Both Inspector Carson and A/D/S/Sgt. Wright realized in hindsight that this was not an appropriate decision. Park Superintendent Les Kobayashi should not have been a regular attendee at the

command post meetings. The OPP should have communicated with and obtained relevant information from the Park Superintendent, but Mr. Kobayashi should not have been privy to command post discussions regarding intelligence or the OPP's plans, deliberations, or strategies. It was acknowledged that this created "some confusion as far as information leaving that command post and going to places where it perhaps shouldn't have," such as to civil servants at the Interministerial Committee meetings and to politicians at Queen's Park.

MNR Park Superintendent Kobayashi was at the command post for most of September 5 and 6. Mr. Kobayashi provided regular reports to his superior, Peter Sturdy of the Ministry of Natural Resources. The command post police briefings were the primary source of the information relayed by Mr. Kobayashi.

Mr. Sturdy was a participant at the September 5 and 6 IMC meetings where he shared with civil servants and political staff Mr. Kobayashi's unverified information such as automatic gunfire discharged by First Nations people and the presence of weapons.

In my view, a lesson learned from Ipperwash is that MNR officials should not participate in command post briefings with the Incident Commander and other OPP officers. Nor should MNR officials be present at the command post. Although it is important for communication to exist between the OPP and MNR officials, the communication should take place with an OPP officer appointed to liaise with these park officials. Such an arrangement would allow for valuable exchanges of information between the MNR and the OPP without distracting the Incident Commander from police operations. Moreover, such an arrangement would allow the Incident Commander to be insulated from the possibility or perception of political interference.

REACTION OF THE ABORIGINAL PEOPLE TO THE INCREASED POLICE PRESENCE AND THE OPP'S UNSUCCESSFUL ATTEMPT TO INITIATE DIALOGUE WITH THE PARK OCCUPIERS

There was a noticeable increase throughout September 5 in the number of OPP cruisers and police surveillance. The First Nations people observed police checkpoints at various locations. They also noticed that the police were not wearing their conventional uniforms. The park occupiers also observed

unusual boat activity on Lake Huron. A boat anchored north of the park remained in this location throughout the day and into the night.

Helicopter surveillance was another method the police used to patrol Ipperwash Park, which was also very evident to the First Nations occupiers. Many Aboriginal occupiers became agitated with the police helicopter activity; it was “irritating” and “harassing;” “they were flying around, coming down real low, blowing up a lot of dust.” They saw a man hanging outside of the helicopter, photographing the occupiers with a large camera.

Inspector Carson was anxious to initiate a dialogue with the park occupiers on September 5 to discuss their concerns in the hope that issues could be resolved. He designated Sergeant Seltzer, who had training and experience in crisis negotiations, as the OPP negotiator.

In my view, OPP officers whose responsibility is to open up a dialogue with the Aboriginal occupiers should have knowledge of the Aboriginal community, their history, and issues of concern to them. Without such information, it is difficult to establish meaningful communication and achieve the objective of de-escalating the Aboriginal protest. The police should have tried to find an appropriate person, such as an Elder or other respected person, to meet with the occupiers and to act as a mediator. To peacefully resolve Aboriginal protests, it is critical to involve First Nations officers and police services.

Inspector Carson did not contact the Assembly of First Nations, the Chiefs of Ontario, or the Union of Ontario Indians for assistance. Nor did he ask Chief Tom Bressette if anyone on the Band Council, such as former Band Chief Bonnie Bressette, could help initiate negotiations with the occupiers.

Nor did Inspector Carson seek the assistance of the OPP’s First Nations police branch to open up communication with the Aboriginal occupiers. He did not know if any of these officers had a relationship with this Aboriginal community. Inspector Carson decided to approach local OPP officers, such as Constable Vince George, to enter into a dialogue with the occupiers. These officers did not have negotiation skills.

Inspector Carson knew Bruce Elijah and Robert Antone had acted as mediators/negotiators at Captain Smith’s request when the army camp was occupied on July 29, 1995. He also knew these two Aboriginal men had conducted a cultural awareness program for the military. Yet Inspector Carson did not consider using the services of either Mr. Elijah or Mr. Antone to assist in communicating or negotiating with the park occupiers.

OPP Chief Superintendent Coles thought perhaps an important opportunity was missed in not having a person from the Aboriginal community communicate with the occupiers to discuss their issues and concerns. He agreed that such a person might have been instrumental in de-escalating the situation. He also agreed that the presence of a third party is important because the OPP could misconstrue the occupiers' concerns and intentions, and conversely the First Nations occupiers could misinterpret the OPP's intentions.

This is precisely what occurred — the conduct of both the OPP and the Aboriginal occupiers created misconceptions. Outside resources, such as Chief Mercredi or other First Nations negotiators, were not part of the operational plan.

This should have been an important component of Project Maple. Aboriginal negotiators from outside the community had been used in the past to de-escalate volatile situations at Ipperwash. When the military camp was occupied at the end of July 1995, the military asked Robert Antone and Bruce Elijah to help defuse the situation, assist resolving the issues, and help ensure that people's safety was not placed in jeopardy.

OPP Chief Superintendent Coles believes there is a need for “on call” conflict resolution teams consisting of Aboriginal and non-Aboriginal negotiators who can be dispatched to communities to assist in the resolution of protests, blockades, and occupations.

The OPP's attempts to communicate with the occupiers on September 5 were not successful. A/D/S/Sgt. Wright, Sergeant Seltzer, and MNR Park Superintendent Kobayashi arrived at the park early that afternoon to initiate dialogue with the occupiers, and to serve a trespass notice. The Aboriginal occupiers were reluctant to communicate with the OPP for several reasons. They were fearful the police would target the spokespersons and that criminal charges would be laid. The occupiers also did not believe that speaking to the police would advance their objective, namely, the return of the land.

ALTERCATION WITH POLICE: THE PICNIC TABLE INCIDENT

The occupiers decided to move picnic tables from inside Ipperwash Park to the sandy parking lot on the evening of September 5. About ten to twelve tables were carried over the fence into the sandy parking lot. The occupiers did this for two reasons: they wanted to establish that the sandy parking lot was part of their territory, and they wanted to control access to the area.

The picnic tables were placed in a circle in the sandy parking lot to prevent access to the beach from the paved road at Army Camp Road and East Parkway Drive. Aboriginal witnesses referred to it as a “blockade” or a “barricade.”

Officers in about three OPP cars drove toward the intersection of Army Camp Road and East Parkway Drive. Some of occupiers were sitting on one of the picnic tables at that time. Although the occupiers did not think the police had any intention of making contact with the picnic tables, one police cruiser deliberately rammed into the picnic table on which the Aboriginal people sat. The table began to break from the impact of the cruiser. The front end of the cruiser went under the bench of the picnic table, at which point Aboriginal people lifted the picnic table and flipped it onto the hood and windshield of the OPP car. Yelling and commotion ensued. An occupier threw rocks in the direction of the OPP cruisers. Three police cruisers were damaged.

Aboriginal witnesses described the police conduct as inappropriate, aggressive, and intimidating. It was their view that the police, not the occupiers, had initiated this confrontation. At no time that night did the police tell the occupiers they would be safe if they stayed inside the park behind the fence.

Aboriginal witnesses testified that several OPP officers made racist comments, including “wagon burners” and “wahoos.” The First Nations people said that an officer looked over the crowd of people, pointed at Dudley, and said, “Come on out, Dudley. You’re going to be first.” An Aboriginal occupier picked up sand from the ground and threw it in the officer’s face. An OPP officer beside him pulled out a can of pepper spray and sprayed it at the First Nations people who were behind the park fence.

It is clear the OPP officers made aggressive and culturally insensitive remarks about the First Nations people during the Ipperwash Park occupation. This occurred on September 5 and September 6. Culturally insensitive and racist memorabilia were also designed and circulated by OPP officers after Dudley George’s death.

Late in the evening of September 5, the OPP Sergeant responsible for coordinating the ERT teams was awakened from his sleep when his pager went off at a hotel in Forest. He made statements such as, “their day will fucking come,” as well as “we want to amass a fucking army ... and do these fuckers big time. But I don’t want to talk about it because I’ll get all hyped up.” The Sergeant said he was exhausted and grumpy because he had little sleep over the previous two days. However, he acknowledged at the Inquiry that

his remarks were inappropriate and his language was aggressive and confrontational. The Sergeant made other questionable remarks earlier that evening when he gave instructions to an OPP Constable regarding the *HH Graham* police boat.

This OPP Sergeant was a role model for the ERT officers. Yet the language he used was insensitive and aggressive. It reinforced negative stereotypes of Aboriginal people and was not respectful of the First Nations people. This clearly was not an appropriate role model for OPP constables and other officers involved in the Ipperwash occupation. It was not conducive to establishing a trust relationship between the police and the First Nations people. Nor did it foster Project Maple's objectives — to resolve the occupation through negotiation and by peaceful means.

Another OPP Sergeant made inappropriate and culturally insensitive remarks in conversations on September 5. While speaking to another officer responsible for the OPP's Marine Unit, the Sergeant discussed his accumulated overtime hours. When asked what he was going to do with all this money, the Sergeant replied, "[G]ive it to the government ... so that they can give the Indians more stuff. Like you know, all this stuff we keep giving them doesn't come cheap. Somebody's got to pay for it."

When asked about the Ipperwash situation in a later call with OPP Dispatch, the Sergeant said:

SERGEANT: *And we just pay more taxes so that we could afford to build houses on it for them.*

OPP DISPATCH: Oh, come on ... Now we're going to give to them with houses?

SERGEANT: *Yeah. Don't you think that's right? Because you and I stole that land from them?* (emphasis added)

The Sergeant acknowledged that his statements were "unfair" and "unprofessional."

The OPP Sergeant undoubtedly made sarcastic and derogatory remarks about Aboriginal people. The Sergeant's comments promoted negative stereotyping of Aboriginal people, a clear barrier to initiating respectful dialogue to resolve the occupation by peaceful means.

The most obvious instance of racism and cultural insensitivity was heard in the comments made by members of the OPP intelligence team on September 5, 1995 — one day before the shooting.

SPEAKER 1: *No, there's no one down there. Just a big, fat, fuck Indian.*

SPEAKER 2: *The camera's rolling.*

SPEAKER 1: *Yeah. We had this plan, you know. We thought if we could ... five or six cases of Labatt's 50, we could bait them.*

SPEAKER 2: *Yeah.*

SPEAKER 1: *And we'd have this big net at a pit.*

SPEAKER 2: *Creative thinking.*

SPEAKER 1: *Works in the south with watermelons.*

Inspector Carson described the comments as “inappropriate,” “unacceptable,” and “not to be tolerated.” He considered the statements to be racist.

There is no doubt that the comments were racist. These officers were members of the Project Maple intelligence team. It is fundamental that police officers who are involved in intelligence are impartial and free of bias as they process and filter insensitive and critical information. The cultural insensitivity and racism that existed among some members of the Ontario Provincial Police contributed to the lack of a timely, peaceful resolution to the Aboriginal occupation.

During the Inquiry, other offensive communications were revealed in tape-recorded conversations and radio transmissions that involved members of the OPP Ipperwash police operation on September 5 and 6, 1995. The Commission also heard evidence from some of the occupiers as to comments allegedly directed at them by OPP officers on September 5 and 6 at or near the park. It is not beyond reason to accept that these types of comments were made directly to the occupiers, given the derogatory comments made by police officers that were captured on tape. In light of these types of comments and the belief of several occupiers that the police did not respect Aboriginal people, it is not surprising that the OPP was unsuccessful in opening up a line of communication with the occupiers from September 4 to 6, 1995. There is no place for racial taunts or slurs of any type by police officers. Not only are such comments “counterproductive” to the efforts of police officers in their role as peacekeepers, they are contrary to professional standards, and they can lead to violence.

OPP officers involved in the Ipperwash operation procured T-shirts and related paraphernalia as a memento or souvenir after the events of September 6, 1995, which were offensive. Among the items was a coffee mug with an OPP

shoulder flash with an arrow through it, and on the other side, an OPP shoulder flash with the words “Team Ipperwash ’95” written below. One of the T-shirts depicted a feather on its side below an OPP crest. Several officers who participated in the confrontation on the night of September 6 admitted to having bought or otherwise acquired a mug, a T-shirt, or both. At the time, these officers did not appreciate that the image of a feather on its side represented death in the local Aboriginal culture. These officers initially believed these images and the objects themselves were benign and that it was not inappropriate to possess or sell them.

The Commission learned of a second souvenir T-shirt during the course of the Inquiry that depicted a TRU symbol (a sword) breaking an arrow in half over an anvil (which represented ERT). The use of the broken arrow imagery targeted a distinct group of people by their race through the use of violent imagery. It is a negative, stereotypical symbol of the Aboriginal people in the context of the TRU and ERT teams exercising their power over the occupiers.

These T-shirts contain racist imagery. Notwithstanding the lack of intention of the implicated officers who procured and purchased this memorabilia, their failure to exercise sensible judgment when tension and fears were very high explain why the OPP were unable to resolve this matter in a timely and peaceful manner consistent with the stated objectives of Project Maple.

REPORTS OF GUNFIRE

The Tactical Operations Centre at the MNR parking lot received a report about 11:40 p.m. on September 5 from an OPP constable who heard “large amounts of automatic gunfire way back in the army base.” But First Nations witnesses were adamant that they did not fire automatic guns late in the evening on September 5. Nor had any OPP officers reported seeing automatic weapons in the army camp or in the park.

First Nations witnesses repeatedly stressed the understanding amongst the occupiers that no guns would be brought into Ipperwash Park. It was intended to be a peaceful occupation.

Unfortunately, civil servants and political staff received information of automatic gunfire the following day. They attached great importance to it and it heightened anxiety amongst Queen’s Park officials in Toronto. Park officials at Ipperwash had conveyed this unverified information to their superiors in the Ministry of Natural Resources.

SEPTEMBER 6, 1995 — BEFORE 7:00 P.M.

Removal of Picnic Tables

When Inspector Carson arrived at the Forest Detachment after sleeping for a few hours at a nearby hotel, he learned about the picnic table incident and the reports of automatic gunfire from the previous night. At no time was Inspector Carson told that an OPP officer had used his police cruiser to push the picnic tables stacked by the occupiers. Nor was he informed of the circumstances in which an OPP officer had discharged his pepper spray at the Aboriginal occupiers.

In a telephone call with Ron Fox, Inspector Carson said that picnic tables had been piled outside the park and the occupiers had built fires adjacent to private property. There was a danger, he said, that the neighbouring cottages could be damaged if the picnic tables were set on fire. Inspector Carson told Ron Fox the OPP planned to “deal with this table block ASAP.” He also expressed concern about officer safety.

Dudley George and fourteen-year-old J.T. Cousins had stayed awake through the night and were sitting at a picnic table in the sandy parking lot drinking coffee in the early morning of September 6. ERT officers approached the sandy parking lot. ERT Team 1 carried shields to protect against rocks that the occupiers might throw. Their role was to provide coverage while ERT Team 2 physically removed the picnic tables from the sandy parking lot. A large number of ERT officers were sent for two reasons: (1) to expedite the pace of the operation, namely the loading and removal of over twenty picnic tables; and (2) to reduce the probability that a problem would arise.

J.T. Cousins was frightened when he saw the ERT officers approach. The officers pointed their guns in the direction of the park. J.T. Cousins was “scared” and “about ready to take off and head into the woods — bushes,” but Dudley reassured him: “Don’t be scared. They can’t do nothing. This is our land.” Dudley George and J.T. Cousins ran into the park.

Assisted by MNR staff, the ERT officers proceeded to load the picnic tables onto an MNR trailer. A helicopter hovered over the area. On Inspector Carson’s instructions, Sergeant Korosec had arranged for a helicopter to patrol and videotape the removal of picnic tables.

Rocks thrown by the occupiers the previous day had damaged three OPP cars. In my view, it was unnecessary for the OPP to use their rifles and scan the area with their firearms. Dudley George and a fourteen-year-old boy were

simply drinking coffee when the police arrived to remove the picnic tables. They did not have any weapons, and they ran into the park as soon as they saw the police approach. The OPP did not encounter any resistance as they removed the picnic tables. The manner in which the police carried out this operation undoubtedly contributed to the tension and escalated events at Ipperwash Park.

First Nations people did not enter the sandy parking lot during the removal of the picnic tables, which were then transported to the MNR parking lot off East Parkway Drive. The picnic table removal was uneventful and completed by 9:05 a.m.

The Aboriginal occupiers considered the OPP's actions in removing the picnic tables from the sandy parking lot on the morning of September 6 an escalation of events that heightened the tension.

Inspector Carson believed the OPP's actions in removing the picnic tables from the parking lot on the morning of September 6 indicated to the Aboriginal occupiers that they should stay out of the sandy parking lot and that the police would not enter the provincial park. But in fact this important message had not been clearly communicated to the occupiers.

Inspector Carson and the other OPP officers did not think about using a bullhorn that morning to communicate this message. Nor did they resort to any other methods to impart this critical information to the Aboriginal occupiers. Removing the tables in the sandy parking lot was a very subtle, indirect, and ineffective way of informing the occupiers not to move beyond the park boundaries. The Aboriginal people were not told the OPP had no intentions of entering the provincial park. I do not agree with Inspector Carson that the OPP conveyed these important messages to the occupiers. This was a failure in communication, and it undoubtedly contributed to the tension.

A regulation pursuant to the *Police Services Act* stipulates that officers must file a use of force report when they draw a handgun, regardless of whether a shot is fired. I find it surprising that there is no similar requirement for OPP officers to file a use of force report for long guns (rifles). In my view, there should be the same requirement for long guns. When OPP Commissioner Gwen Boniface testified at the Inquiry, she was receptive to the proposal that use of force reports be required for long guns. She agreed this would help monitor the appropriate use of rifles and other long guns by members of the police force.

Mayor Fred Thomas appeared at the OPP command post on the morning of September 6 to speak with Inspector Carson. The purpose of the Mayor's visit was to convey the concerns of his community, to find out the status of the

injunction, and to receive an update on events at Ipperwash Park. He told Inspector Carson that the community is “terrorized.”

Another politician, MPP Marcel Beaubien, arrived at the OPP command post before John Carson went off duty on September 6. The handwritten version of the OPP scribe notes record Mr. Beaubien conveying to the OPP: “Premier is in constant touch. Good communications.”

OPP Commissioner O’Grady was not aware Mr. Beaubien had visited the command post on September 6 until months later. He agreed that it was not appropriate that politicians, including MPP Beaubien or Mayor Thomas, attended at the OPP command post. The Incident Commander is involved with operational matters and, he said, “it would have been much better if there had been another site removed from the command post where someone could talk to these individuals.” The OPP Commissioner also thought some topics of conversation between the Incident Commander and the MPP were regrettable, such as the references to the Premier. In Commissioner O’Grady’s view, information on the Premier’s personal views and wishes should not be discussed with operational officers. I agree with Commissioner O’Grady on this point.

In my view, Inspector Carson should not have permitted the Mayor or other politicians to meet with him in the command post in Forest. Although it is important for the Incident Commander to be aware of the local community’s anxieties and frustrations and for the police to keep the community informed, it is not appropriate for politicians and municipal officials to meet with the Incident Commander in the command post. Such meetings in the command post can distract Incident Commanders from their jobs. They also create the risk of actual or perceived improper political direction of the police.

It is my recommendation that the OPP appoint a buffer, a community liaison officer, to meet with local politicians and community representatives. This will ensure that the OPP Incident Commander receives important information from stakeholders, such as the concerns in the community and events taking place in the locality. In turn, the OPP can communicate information, reduce anxieties, dispel rumours, and prevent events from occurring that may exacerbate the tension and further fuel the protest. The appointment of an OPP community liaison officer has several advantages: it allows the Incident Commander to focus his or her attention on the police operation; it ensures the Incident Commander is not overburdened liaising with politicians and community representatives; and it avoids the perception, if not the reality, of political influence over operational decisions.

CONTINUED UNSUCCESSFUL ATTEMPTS TO COMMUNICATE WITH THE ABORIGINAL PARK OCCUPIERS

Inspector Carson was aware that it was important for the OPP to establish a dialogue with the park occupiers. September 6 was the third day of the occupation and there had been no meaningful communication with the Aboriginal occupiers.

On the morning of September 6, Captain Smith from the Department of National Defence arrived at the OPP command post to offer his assistance to Inspector Carson.

Inspector Carson was aware that Captain Smith had ongoing contact with the First Nations occupiers in the built-up area of the military base. Despite the fact that the OPP had had no success in initiating a meaningful dialogue with the park occupiers, Inspector Carson did not ask Captain Smith to try to arrange a meeting with the occupiers as soon as possible. Had the OPP Incident Commander made this request, Captain Smith would have tried to facilitate immediate communication with the park occupiers. This was another significant missed opportunity for the police to learn and understand the occupiers' grievances and anxieties, and in turn to communicate the OPP's intentions to the Aboriginal people.

The OPP Incident Commander did not consider asking Captain Smith to send the message to the occupiers that if they remained within the park boundaries, the OPP had no intention of entering the park. This was most unfortunate. Dialogue between Captain Smith and the occupiers may have helped avert the tragic events that took place that night in the confrontation that occurred between the OPP and the First Nations people.

Moreover, it is surprising that the OPP Sergeant responsible for the negotiators did not know the history of Stoney Point and the tense relationship between the occupiers and people of the Kettle and Stony Point First Nation. It is important for the OPP Crisis Negotiators to be aware of the history and tension between the official Band and the occupiers, particularly when they were seeking information and advice on how to initiate dialogue with the occupiers. Inspector Carson and other members of the command team, such as A/D/S/Sgt. Wright, were aware of this information. This information should have been conveyed to the sergeant responsible for negotiations.

In my view, OPP officers whose responsibility is to open up a dialogue with First Nations occupiers should have knowledge of the Aboriginal community,

their history, and issues of concern to them. Without this information, it is difficult to establish meaningful communication and achieve the objective of de-escalating an Aboriginal protest. Native awareness training and an understanding of Aboriginal issues in the Ipperwash area was lacking amongst many officers involved in the OPP operation. This knowledge was critical, particularly for negotiators attempting to open up communication with the First Nations occupiers.

A/D/S/Sgt. Wright and Sergeant Eve approached the fence at about 3:00 p.m. in an attempt to speak to the occupiers on September 6, but it was apparent that the Aboriginal people at the park had little interest in entering into a dialogue with the OPP. They feared being targeted as leaders of the occupation, criminally charged, and ultimately jailed. People at the park had been involved in other Aboriginal protests and had witnessed the incarceration of First Nations spokespersons.

At no time did A/D/S/Sgt. Wright inform the Aboriginal occupiers that as long as they remained in the provincial park and did not venture into the sandy parking lot, there would be no problem from the OPP's perspective. At no time did A/D/S/Sgt. Wright make it clear that a line was drawn at the park fence. Mark Wright agreed that from September 4, the day the park was occupied, until the confrontation on September 6 when Dudley George was shot, this was "never specifically communicated" to the occupiers. A/D/S/Sgt. Wright acknowledged this was a missed opportunity and I agree.

In my opinion, the OPP might have been more successful if they had resorted to other measures to stimulate a dialogue with the Aboriginal people. The fact that some of the officers were dressed in police uniforms rather than civilian clothes was likely not conducive to opening up a dialogue with the First Nations occupiers. In fact, Inspector Carson raised this with these officers when they returned to the command post that afternoon. As well, the OPP could have resorted to other techniques, such as setting up a field telephone or inserting pamphlets through the park fence to initiate communication with the park occupiers.

In my view, the occupiers might also have been more receptive if negotiators on behalf of the federal and/or provincial government had appeared at the fence to try and resolve issues that have plagued the community for decades, such as the appropriation of the Stoney Point Reserve in 1942. Had government officials with authority to resolve these issues confronting the

First Nations people appeared at the park fence, the occupiers would likely have been more amenable to participating in a dialogue. Undoubtedly this would have helped the OPP to realize the objective of Project Maple, namely, to resolve the occupation by peaceful and non-violent means.

As mentioned, there was no reference in Project Maple to the technical means by which the OPP would establish communication with the occupiers. There was no reference to the OPP's negotiating strategy or to the messages to be conveyed to the occupiers. Project Maple did not describe resources outside the OPP, such as First Nations negotiators Ovide Mercredi, Bruce Elijah, or Robert Antone — people who could be instrumental in opening up a meaningful dialogue with the park occupiers.

John Carson agreed that, in retrospect, it might also have been useful to involve Bonnie Bressette, the former Chief and Councillor of Kettle and Stony Point First Nation, in the Ipperwash occupation. Inspector Carson was not aware Bonnie Bressette was in the park that day with her children. However, Constable Vince George had seen her that afternoon from the air in the helicopter patrol of the park.

Cyndy Elder of "Approaches Mediation" called the OPP at about 4:00 p.m. to offer her assistance to Inspector Carson that afternoon. The First Nations mediator explained to Sergeant Drummelsmith that she had had contact with Inspector Carson in August 1995 after the army camp occupation. Ms. Elder, who was currently involved in the Gustafsen Lake protest in British Columbia, suggested that she might be able to offer assistance regarding the Aboriginal people in Ipperwash Park. Sergeant Drummelsmith promised to convey the message to Inspector Carson.

When Sergeant Drummelsmith relayed the telephone message a few minutes later, Inspector Carson recognized the mediator's name but he was too busy to return Ms. Elder's call that day. This was despite the fact that the OPP had had no success establishing communication with the occupiers. Inspector Carson acknowledged at the hearings that one of the most difficult aspects of managing an incident such as Ipperwash is to engage in dialogue with the occupiers. But at the conclusion of his conversation with Sergeant Drummelsmith, Inspector Carson said, "The best I can do is some time tomorrow."

Unfortunately tomorrow was too late. About six and a half hours later, the OPP officers marched down East Parkway Drive to the sandy parking lot with their shields and guns. In a confrontation with the First Nations people,

Dudley George was killed, and other Aboriginal people and OPP officers were injured.

Inspector Carson went off duty at about 7:00 p.m. and went to the private home of friends for dinner in Forest. As he left the command post that night, Inspector Carson was “optimistic” — “status quo for the night,” “injunction application tomorrow morning,” “and see what flows from that.” On the night of September 6, he expected that “we would maintain the checkpoints and the patrols,” monitor the area with “night vision” equipment, and “basically sit tight” and “see what happens with the injunction in the morning.”

GOVERNMENT MEETINGS ON SEPTEMBER 6

Seeking direction from the Attorney General and the September 6 IMC Meeting

Prior to meeting with Attorney General Harnick to seek direction on the Ipperwash protest, Julie Jai, Acting Legal Director of the Ontario Native Affairs Secretariat (ONAS), briefed Deputy Attorney General Larry Taman in the early morning of September 6. Ministry of the Attorney General (MAG) lawyer Tim McCabe was present. It was clear to Ms. Jai that the Deputy Attorney General did not think this was a case for an *ex parte* injunction. Mr. Taman did not want to take precipitous action and thought that other legal avenues should be explored.

Mr. Taman and Ms. Jai then met with Attorney General Charles Harnick. Ms. Jai recommended to the Attorney General that the government seek a regular injunction with notice to the occupiers at Ipperwash Park, but that it be sought as soon as possible. Ms. Jai explained that the government did not have much information on the specific grievances of the occupiers, other than that they claimed a sacred burial ground existed in Ipperwash Park. Ms. Jai reported that the occupiers fluctuated from ten to forty people, including women and children. It was a peaceful, non-violent protest, there were no visible weapons, and there did not appear to be any immediate risk to public safety. Nor did there appear to be any land claim or outstanding lawsuits in relation to Ipperwash Park. In Ms. Jai’s view, it was important to open a dialogue and communicate with the Aboriginal people — seeking an *ex parte* injunction was contrary to that objective.

Ms. Jai explained that the OPP wanted to proceed cautiously and did not consider the occupation an urgent situation. The police thought a court injunction

would provide them with the legal means to remove the occupiers from the park, if it were necessary.

Attorney General Harnick appeared to Ms. Jai to be receptive to the recommendation, and agreed that a regular civil injunction be sought as soon as possible. Charles Harnick thought the occupation should be approached cautiously, that there should be continuous efforts to communicate with the Stoney Point people, and that the OPP should exercise its discretion in policing the protest and in laying any *Criminal Code* charges it considered appropriate. It was Ms. Jai's understanding that the Attorney General's instructions were to seek a regular civil injunction. Ms. Jai proceeded to the IMC meeting which she chaired.

The IMC meeting on September 6 was very tense and the atmosphere was charged. The prime reason for the tension was the “differing views as to the urgency” with which the government had to proceed. The Premier's EA Deb Hutton again attended the meeting and was described by participants as “extremely forceful,” “very assertive in her views,” “adamant,” and a “very ... major presence.”

Ms. Hutton's objective as she walked into the ONAS boardroom that morning was to seek an option that would result in the removal of the occupiers as quickly as possible — “ending the occupation, removal of the occupiers ... was our goal.” This was the goal of both the Premier and Deb Hutton.

Peter Sturdy from the MNR reported at the meeting that someone had heard “automatic gunfire.” Park Superintendent Les Kobayashi had relayed this unverified police information to Mr. Sturdy. Mr. Sturdy did not consider the reports of automatic gunfire to be police operational information when he conveyed it to the Committee. The conveying of this information demonstrates the reasons why the MNR should not have been present in the command post. Neither Mr. Kobayashi nor Mr. Sturdy had the expertise to assess the reliability or significance of the reports of automatic gunfire or to place such reports into the full context of police operations.

Mr. Sturdy's comment about automatic gunfire alarmed several people at the meeting, particularly political staff. Deb Hutton was convinced that the situation at the park had escalated and that public safety was at risk.

In my view, politicians and civil servants at the IMC meeting should not have been privy to this report about automatic gunfire. It was unverified information — the OPP were uncertain whether automatic gunfire had been discharged the previous night. This unauthenticated information clearly had an

impact on the people at the IMC meeting. It raised their anxiety and propelled some of them to believe that the government should take immediate measures to what they perceived to be an urgent situation.

Uncertainty existed at the IMC as to which ministry should take the lead in responding to the Aboriginal occupation. The Ministry of Natural Resources did not want to be at the forefront of the government's response to the occupation. Solicitor General Runciman was also reluctant to take an active role.

Deb Hutton made it clear at the IMC meeting that the Premier did not want third parties to enter into discussions with the occupiers. Only the OPP and MNR should communicate with the Aboriginal people: "Premier is firm that at no time should anybody but OPP, MNR be involved in discussions, despite any offers that might be made by third parties (Chief, etc.) because you get into negotiations and we don't want that." ONAS and other civil servants perceived that this comment limited the range of options the IMC could contemplate to address the occupation.

It was clear to Ms. Jai and others at the meeting that the Premier remained adamant that the occupation was a law enforcement issue, not a First Nations matter. It continued to be the position of Premier Harris that this should be treated as an illegal occupation rather than an Aboriginal issue. The Premier, according to Ms. Hutton, did not want third-party involvement, nor did he support negotiations with the occupiers. It was evident to Ms. Jai that the fact that the occupiers were Aboriginal, that they claimed the land belonged to them, and that a burial site existed in the park were irrelevant considerations for the government.

Tim McCabe, senior civil litigator at MAG, described to the IMC the different types of injunctions (ordinary/with notice and ex parte/without notice), as well as the court application process. It was Mr. McCabe's view that the park occupation was not suitable for an ex parte injunction and would not likely succeed in court. The park was empty and there was no direct evidence that the occupiers were armed. The threshold for an ex parte injunction was high; it was necessary to establish that the matter was of such urgency that it did not warrant giving notice. Mr. McCabe suggested an application for an ordinary injunction be made with a request to the court for an abridgment of the three-day notice period.

Ms. Hutton was not satisfied with this time frame and said: "Premier feels the longer they occupy it, the more support they'll get — he wants them out in a day or two." This placed significant pressure on the Committee. It

was evident from Ms. Hutton's remarks that the Premier wanted to deal with the occupation as soon as possible. Ms. Hutton was exasperated with the legal advice provided by Ms. Jai and Mr. McCabe.

Ron Fox cautioned against such a law enforcement approach. He advocated a measured, slower, longer-term response, and supported the injunction process.

In my view, Ms. Hutton's comments at the IMC meeting, her focus on Ontario's title to the park, and her characterization of the occupation as a law enforcement issue impeded "ongoing discussion" of the burial grounds and the cultural values and attachments of Aboriginal people to what they claimed were the remains of their ancestors. There was information regarding the First Nations concerns for the protection of these burial sites at both provincial and federal government levels. Had more effort been exerted, had more concern been attached by political staff and civil servants to this issue, and had there been due diligence, government officials would have realized that documents stored for decades in the basement of the Whitney Block showed that First Nations people had voiced their concerns about these burial grounds. Instead, the government did not attach sufficient importance to the existence of these sacred sites or to the spiritual and cultural attachment of the Aboriginal people to these burial grounds.

The MNR Information Services Coordinator in Chatham, who emailed Peter Study during the IMC meeting about television footage of "Natives" with baseball bats and police with guns, is the same person who in the 1970s found the burial ground documents in the basement of the Whitney Block of the Ontario government buildings. This MNR official had dictated information from a 1937 federal document on the "Indians" of Kettle and Stony Point Band who were "much concerned in the preservation of the old Indian Cemetery" located "within the boundary now being developed as a Park." This explains why in January 1975, both the MNR District Office in Chatham and the MNR Superintendent in Ipperwash had information on these burial grounds in Ipperwash Park. Yet the MNR official did not convey this important information to Mr. Sturdy who attended the August 2, September 5, and September 6 IMC meetings on the Aboriginal occupation at Ipperwash of the army camp and the provincial park.

Another missed opportunity. This information substantiated the assertion of the Stoney Point people that a burial ground, a sacred site, existed in

Ipperwash Park. First Nations people had brought this to the attention of the federal government fifty-eight years earlier in 1937. The provincial government had this information in 1975, twenty years before the Ipperwash occupation. The failure in communication in the Ministry of Natural Resources between Mr. Smith and Mr. Sturdy regarding the First Nations people assertion of this burial site in Ipperwash Park people is most unfortunate.

Defusing tension in the Ipperwash area, particularly of the non-Native community, was identified as a “critical issue” at the IMC meeting. Neither local MPP Marcel Beaubien nor the Mayor of Bosanquet were considered suitable to discharge this task. Mr. Beaubien’s acts were perceived to raise anxiety rather than to calm the local people. In a press release, Bosanquet’s Mayor Fred Thomas had described the park occupation as a “reign of terror.”

It was suggested that a list be compiled of individuals and groups who needed to be “calmed down.” As one political staff member said, compiling such a list of individuals and organizations in the local community had not been contemplated at the previous IMC meetings on August 2 or September 5, and it would have been helpful to have had a prepared list when IMC members met on September 6.

In my view, it would have been both helpful and advisable to have had a communication plan in place well in advance of September 6. I also think it is important for community leaders to know which ministry to contact in an occupation or other local crisis. Such measures would have fostered a two-way dialogue, which may have defused the anxieties and concerns of the Mayor, local municipal and provincial politicians, as well as the residents and cottagers in the Ipperwash area. In addition, there ought to have been regular briefings by the government of stakeholders.

The IMC Committee developed messages for the Ministers to convey to the public:

1. the Ministry of the Attorney General has been instructed to seek an injunction asap.
2. police have been asked to remove the occupiers from the park.
3. public safety and the removal of the trespassers from the park are the key objectives.

Deb Hutton from the Premier’s Office stressed that it was the government’s position that the occupiers be removed and that there be no negotiations.

Michael Harris confirmed at the Inquiry that Ms. Hutton had the authority to speak on his behalf and on behalf of the Premier's Office at the IMC meetings. In his opinion, Ms. Hutton fairly reflected his views. But in my opinion, neither Deb Hutton nor Michael Harris fully appreciated at that time the power of the Premier and the Premier's Office. They were a new government and did not understand that Ms. Hutton's forceful personality and her strong statements made on behalf of the Premier at the IMC meetings had the effect of halting the exchange of important ideas and recommendations by other members of the Committee who very much wanted the occupation at Ipperwash to be resolved peacefully.

Again at the September 6 meeting, IMC members did not recommend the appointment of a facilitator or a negotiator to initiate and sustain a dialogue with the First Nations occupiers. As mentioned, the IMC had discretionary powers to appoint a facilitator/negotiator, to agree to a negotiating agenda with the parties, to make decisions on third-party intervention, and to involve the Indian Commission of Ontario. Clearly, appointing a negotiator would protract the occupation and was inconsistent with the government's desire to remove the occupiers as soon as possible.

Communication is an essential component of building trust between the police and First Nations people. Because no facilitator/negotiator was appointed, the IMC did not have a communication strategy with the occupiers or a person whose role was to negotiate with the First Nations people.

In my view, the IMC should have appointed a facilitator/negotiator at the beginning of the occupation. This would have given the government valuable information regarding the frustrations, concerns, and demands of the occupiers. An essential component to a peaceful resolution of the protest was communication between the government and First Nations people. A negotiator could also have facilitated communication between the police and the occupiers. As Ms. Jai said retrospectively, the facilitator could serve as a "go-between" for the occupiers and the police, which would have avoided misunderstandings that could result in violence. The government's decision not to appoint a third-party facilitator/negotiator at the beginning of the occupation was a decision for the elected government, but it was a decision that had the consequence of lessening the chance for a peaceful resolution of the occupation.

It is also my view that the separation of the government from police operational decisions needed to be reinforced at the IMC meeting. From the questions and comments made by political staff such as Ms. Hutton, it was evident

that some people thought the government might have the ability to direct the police to take particular actions. In addition, MNR staff conveyed some police operational information to participants at the IMC meetings. Clearly, both political staff and civil servants need to receive training and briefings on the importance of the separation of government from police operational decisions.

The inclusion of political staff on the IMC was also problematic. This was soon recognized and the Interministerial Committee on Aboriginal Emergencies was restructured the following day.⁵

At the end of the meeting, it was the understanding of IMC members that: (1) the goal was to remove the occupiers from the park as soon as possible; (2) public safety was paramount; and (3) the Crown Law Office—Civil would proceed expeditiously to obtain an injunction. Members were to take these recommendations to their respective Ministers.

When IMC members left the September 6 meeting at 11:45 a.m., they believed the government lawyers were preparing an application for an ordinary injunction, not an *ex parte* injunction. But instructions to lawyers Tim McCabe and Elizabeth Christie changed that afternoon.

“AG INSTRUCTED BY P THAT HE DESIRES REMOVAL WITHIN 24 HOURS”

Attorney General Harnick told Deputy Attorney General Taman on the morning of September 6 that the Premier wanted an injunction immediately and the occupiers out of the park within twenty-four hours. Inscribed in Mr. Taman’s notes that morning were the following words: “AG instructed by P that he desires removal within 24 hours — instruction to seek injunction.”

It was evident to Mr. Taman that Premier Harris’s approach was different from the slow, cautious approach subscribed to by Attorney General Harnick and Solicitor General Runciman. Mr. Taman also realized that MAG lawyers were to immediately seek an injunction. But in his view, the enforcement of the injunction and the removal of the occupiers fell within the discretion of the police.

The Premier wanted an injunction to be sought immediately, he wanted the Aboriginal occupiers out of Ipperwash Park within twenty-four hours,

5 The September 7 IMC meeting resulted in a significant restructuring of the Committee as a consequence of the decision of the Deputy Ministers that political staff would no longer participate in the IMC meetings.

and he wanted the situation resolved quickly. MAG lawyers and the Acting Legal Director of ONAS were soon told the government's directions had changed. Elizabeth Christie and Tim McCabe began to prepare an *ex parte* injunction application.

Although it was legitimate for the Premier or other politicians to take the position that it considered the occupiers trespassers, that it wanted the occupiers out of the park as quickly as possible, and that it would seek an *ex parte* injunction without notice to the Aboriginal people, it was inappropriate to place a twenty-four-hour time limit on the removal of the occupiers from the park.

It is not appropriate for the government to enter the law enforcement domain of the police. Law enforcement properly falls within the responsibility of the police. To maintain police independence, the government cannot direct when and how to enforce the law. Neither the Premier, the responsible Minister, nor anyone in government should attempt to specify a time period, such as twenty-four hours, for the occupiers to be removed from the park. It is for the police to decide whether and when arrests will be made, and the manner in which they will be executed.

THE “DINING ROOM” MEETING

A twenty-minute meeting at the Ontario legislative building attended by the Premier, Ministers, and their staff, was held on September 6, 1995, the day Dudley George was shot. This meeting has been a subject of controversy. Who initiated the “dining room” meeting, what was its purpose, who attended, and why were seconded OPP officers present? Did politicians attempt to direct the police operations at Ipperwash? Were offensive and derogatory statements made about the Aboriginal occupiers? What conclusions were reached at the end of the meeting on how the government would address the occupation?

The dining room meeting took place before noon after the formal Cabinet meeting. At Cabinet, Premier Harris informed Solicitor General Runciman and Attorney General Harnick there would be a brief meeting to address the occupation in a room next to the Premier's Office near Cabinet chambers, known as the “dining room.” Attendees included Premier Harris, Attorney General Harnick, Solicitor General Runciman, Minister of Natural Resources Hodgson, and their respective executive assistants and Deputy Ministers. Seated at the dining room table were Premier Harris with Ms. Hutton next to him, the three

Ministers, and their Deputy Ministers. Political staff sat in the chairs on the perimeter of the room.

Despite Premier Harris's assertion that the purpose of this meeting was to seek a "consensus," Deputy Attorney General Taman and others thought its purpose was "to make sure that everybody understood what the Premier's view was," and to ensure that the public servants understood the government's expectations. It was to emphasize that there would not be a "go-slow" approach as advocated by some — the government wanted quicker, more aggressive action. A consensus was not sought.

Mr. Harnick testified that when he took his seat, he heard the Premier say in a loud voice: "I want the fucking Indians out of the park." He testified that there was "complete silence" and then in a "calm voice," Premier Harris said that once the occupiers were in the park, they could not be removed. The Premier's "demeanour changed" and he became quiet. Attorney General Harnick was "stunned" by the Premier's "insensitive and inappropriate" remark. It was evident to the Attorney General that the Premier knew his comment was offensive; "when his demeanour changed, that was a signal, a very strong signal, that he understood that that was the wrong thing to have said." Mr. Harnick believed the Premier made this comment because he was frustrated with the occupation, not because of any animosity he had toward Aboriginal people.

Mr. Harris denied he uttered the words, "I want the fucking Indians out of the park," or "[G]et those fucking Indians out of the park and use guns if you have to." Mr. Harris said at the hearings that he considered "I want the fucking Indians out of the park" a racist statement.

The former Premier has no knowledge of any bias Charles Harnick has against him, nor could he think of any reason the former Attorney General would fabricate such a statement. Mr. Harris admitted that he has used this expletive in social situations and other political settings but not in a formal setting.

Mr. Harris acknowledged that, leaving aside the expletive, he did communicate to the people at the dining room meeting that he wanted the Aboriginal people out of the park. In the Premier's view, it was necessary to deal with this urgent issue as promptly as possible.

Former Attorney General Harnick did not disclose the Premier's statement until he testified at the Inquiry ten years later. On repeated occasions in the Legislature, Opposition MPPs asked Attorney General Harnick whether

the Premier made an offensive remark. The Attorney General replied he had no knowledge of such a remark being made. Mr. Harnick concealed information and misled the Ontario Legislature when he denied Premier Harris had made this offensive and racist remark.

After carefully assessing the evidence, it is my view that Michael Harris made the statement “I want the fucking Indians out of the park.” Mr. Harris acknowledged that he could not think of any reason why Mr. Harnick would concoct or fabricate such a statement. It was against Mr. Harnick’s own interest to provide this information to the Inquiry because it contradicted what he said publicly in the Legislature. I can think of no reason why he would testify to this if it did not occur. Mr. Harris has himself acknowledged that he wanted the “Indians” out of the park — he just denies using the expletive “fucking.” In my view, Mr. Harnick’s evidence regarding Mr. Harris’s statement is credible, and I find that Mr. Harris did make this comment on September 6, 1995.

I agree with Premier Harris’s characterization of the statement, “I want the fucking Indians out of the park,” as racist. This statement is racist even if Premier Harris did not intend to convey a discriminatory remark about “Indians.” According to the *Ontario Human Rights Code*, as well as judicial decisions, intention is not determinative of whether a statement or conduct is discriminatory. If the statement or conduct has an unjustified adverse impact on a person or group of persons by reason of race or other prohibited ground under the *Code*, the statement or conduct is discriminatory regardless of the intentions of the person responsible for the statement or conduct. Lack of intention does not make racist words or conduct any less so.

While I find Mr. Harnick’s evidence regarding the substance of the statement to be credible, I question the location and time at which Premier Harris made this statement on September 6. It is possible this comment was not made inside the dining room meeting. Other people who attended the meeting testified that they did not hear this statement at the dining room meeting. More than ten years have elapsed since the former Premier made this statement. It is possible Mr. Harnick’s recollection regarding where in Queen’s Park Mr. Harris made this comment on September 6, 1995 is not accurate. It is possible that Premier Harris’s statement was made just before entering the dining room meeting. However, irrespective of whether Premier Harris made the comment before or during the dining room meeting, there is no evidence

that the Premier's statement had any influence on the OPP operation at Ipperwash on the night of September 6, 1995, when the CMU and TRU were deployed, or was a cause of Dudley George's death.

Ron Fox was with his assistant, Scott Patrick, when he was paged to attend the dining room meeting at Queen's Park. No one seemed to fully understand that although Mr. Fox and Mr. Patrick were seconded to the Ministry of the Solicitor General, they remained police officers. They continued to be peace officers under the *Police Act*, they remained members of the Ontario Provincial Police Association, and they reported to a senior police officer at the OPP for administrative matters.

Premier Harris remembered that a person provided an update of what was happening on the ground from the OPP perspective. Yet he denied this individual was introduced as "Inspector Fox," or that he knew anyone at the meeting was in direct contact with the Incident Commander at Ipperwash.

After the Fox update at the dining room meeting, the Premier conveyed his displeasure that the occupation had not ended. The Premier was disappointed that the OPP had decided to vacate Ipperwash Park after it was occupied on Monday, September 4, and he was frustrated that the occupiers were still in the park two days later on September 6. He was upset that the police had relinquished control of Ipperwash Park. Clearly frustrated, the Premier spoke in a "loud" and "firm voice."

In the Premier's view, the police did not seem to be "as prepared as MNR would have liked them to have been." Premier Harris "wanted to be able to answer" the question as to "why a park that belonged to the Ministry of Natural Resources was now in the hands of what we deemed to be an illegal occupation." He wanted to know "how this event took place"; "were the police prepared, should they have been prepared?"

Mr. Fox construed the Premier's remarks as a criticism of the police. I agree that the Premier's comments were critical of the police and the fact that they were made in the presence of two seconded OPP officers, one of whom was in contact with the Incident Commander at Ipperwash, created the risk of placing political pressure on the police.

Although Premier Harris was critical of the police, I do not find that he interfered with or gave inappropriate directions to the police at Ipperwash. The Premier conveyed his displeasure that the police had relinquished control of the park to the Aboriginal people on September 4, 1995. He also said he did not

think the OPP had adequately prepared for the occupation. Moreover, the Premier expressed his displeasure that the occupiers were still in the park two days later on September 6.

However, the Premier did not inappropriately direct the OPP on its operations at Ipperwash or enter the law enforcement domain of the police. Although one may disagree with his view, it was legitimate for the Premier to take the position that the First Nations people were illegally occupying the park, and that he wanted them out of Ipperwash Park as soon as possible. He did not give directions on the manner in which the OPP should enforce the law; how, when, and what arrests should be made; tactical decisions; or other actions the police should take to end the occupation. In my view, the Premier did not give instructions to or interfere with the OPP's operations at Ipperwash in September 1995.

Mr. Fox and Mr. Patrick should not have been in the dining room meeting with the Premier and Cabinet Ministers. Discussions on the manner in which the government would address the Ipperwash occupation and the politicians' views of the protest should not have been shared with the seconded OPP officers. It was outside the proper reporting system and communication channels of the Ministry of the Solicitor General. The appropriate buffers were not in place. Mr. Fox was privy to the Premier's criticism of the OPP in the dining room. The problem was exacerbated by the fact that Ron Fox was in direct contact with the OPP Incident Commander at Ipperwash during the occupation.

There was a danger in these circumstances, both with the transmission of information from the Premier and Ministry to the provincial police and with the transmission of police information to the politicians. Even though there may not be actual interference by politicians in police operations, the public's perception of non-interference by the government is a fundamental principle that the Premier, Ministers, and other politicians must adhere to.

Another problem was that there did not appear to be any written rules or protocols on the appropriate role of police officers seconded to the Ministry of the Solicitor General. I recommend that written protocols clearly delineate the appropriate functions of police officers seconded to provincial Ministries. In addition, politicians and civil servants should be briefed on the appropriate role of seconded officers such as Mr. Fox and Mr. Patrick.

People at the dining room meeting had different interpretations of what was decided and the way in which the government would proceed in resolving

the Ipperwash Park occupation. Unfortunately, there are no notes of this meeting. Transparency is important in order to promote accountability and public confidence in police-government relations. The dining room meeting was woefully lacking in transparency. This has led to continued suspicions and uncertainty about what actually happened at this meeting.

It is evident that the Premier made it clear at this meeting that it was his view that First Nations people were illegally occupying Ipperwash Park, and he wanted them off provincial property as quickly as possible. I believe too much emphasis has been attached to whether the Premier directed an *ex parte* injunction, rather than an injunction with notice to the occupiers. Provided there is transparency in government decision making, which includes a written record of decisions made, and provided the government does not step into the law enforcement domain of the police, in my view, it was not inappropriate for the Premier to direct the Ontario government to seek an injunction as soon as possible.

The Premier did not disclose the dining room meeting in Question Period in the Legislature after Dudley George's death. On May 29, 1996, MPP Bud Wildman questioned the Premier. He specifically asked whether the Premier had attended any formal or "informal meetings" on Ipperwash.

The Premier was not responsive to Mr. Wildman's questions in the Legislature. When the Premier continued to be questioned in the Legislature in 1996 and 1997, he did not reveal the occurrence of this meeting that took place the day Dudley George was shot. The dining room meeting may not have been a formal Cabinet meeting, but nonetheless it was a meeting that the Premier's Office convened for Cabinet Ministers and senior civil servants. Had Michael Harris been forthright from the inception about the dining room meeting, he would have greatly dissipated the suspicions surrounding the meeting and the allegations of improper political interference with police operations. In my view, it would have been better if Mr. Harris had revealed the dining room meeting in response to MPPs questions in the Legislature, as it would have fostered the important principle of transparency.

In my view, Premier Harris's comments in the dining room, and generally the speed at which he wished to end the occupation of Ipperwash Park, created an atmosphere that unduly narrowed the scope of the government's response to the Aboriginal occupation. The Premier's determination to seek a quick resolution closed off many options endorsed by civil servants in the

Ontario government, including process negotiations, the appointment of mediators, and opening up communication with the First Nations people. His narrow approach to the occupation did not enable the situation to stabilize at the park. Premier Harris had made it clear he wanted the occupiers out of the park as quickly as possible.

MR. FOX SHARES HIS VIEWS OF THE GOVERNMENT MEETINGS WITH INSPECTOR CARSON

Mr. Fox was frustrated as he walked out of the Ontario Legislative Building. He decided to share his agitation about what transpired at the Premier's dining room meeting with Inspector John Carson, the Incident Commander at Ipperwash. This telephone call took place less than one and a half hours after the dining room meeting with the Premier and Cabinet Ministers. The memory of the meeting in the Legislative Building was fresh in his mind. Mr. Fox was clearly upset with the government's position on the Ipperwash occupation and had no reservation about sharing his frustrations with the Incident Commander. The main reason for Mr. Fox's call to the OPP Command Post in Forest was to discuss the injunction with Inspector Carson. At that time, Chief Superintendent Coles and Superintendent Parkin were meeting with John Carson in the command post.

Mr. Fox shared with Inspector Carson his perceptions of the government from the meetings he attended earlier that day: "John, we're dealing with a real redneck government ... [T]hey are fucking barrel suckers, they just are in love with guns ... [T]here's no question they couldn't give a shit less about Indians."

By "redneck government," Mr. Fox was trying to explain that politicians were taking the position that there was "one justice for all," with no differential treatment of First Nations people. The comments "barrel suckers" and "in love with guns" were references to the IMC meetings where some political staff seemed to be preoccupied with the possibility of firearms in the park and army camp, and believed that a way for the government to solve the problems at Ipperwash was through the exercise of force. Mr. Fox was frustrated with what he perceived to be a lack of concern and insensitivity by the provincial government to First Nations issues.

Although Inspector Carson responded to Mr. Fox's comments, "They just want us to go kick ass," the Incident Commander made it very clear that the

OPP were “not prepared to do that yet.” Inspector Carson stressed to Ron Fox that “despite the various opinions that may be at play here,” the OPP have “no intention of going into that park.” Until they “had received the appropriate injunction, that simply wasn’t going to happen” — “the injunction approach ... is the way we deal with these kinds of issues.”

Inspector Carson was very aware of the separation between police operations and the provincial government. He knew that under the *Police Services Act*, “the Commissioner is responsible for the operations of the Ontario Provincial Police,” and that as an OPP Inspector, he took his “direction through the chain of command from the Commissioner’s office.” Inspector Carson “certainly wasn’t pleased” the Premier had expressed this opinion but did not seem too bothered by his comments.

Chief Superintendent Coles was in the command post listening to Inspector Carson’s responses in his call with Ron Fox. He was concerned with some of the exchanges and decided to caution Mr. Fox about the information flow to the government. The call between Inspector Carson and Mr. Fox ended. Chief Superintendent Coles immediately spoke to Ron Fox and cautioned him.

Chief Superintendent Coles was quite properly concerned that operational information had been discussed at the IMC meeting. He was also concerned about the report of automatic gunfire to the IMC. He wanted the situation “to be run from that incident room” in Forest, not from Toronto. Whether the gunfire was automatic or semi-automatic was a decision for the Incident Commander and the OPP, not for politicians, political staff, civil servants, or “some government think-tank.”

Chief Coles also had concerns about the safety of his officers. He instructed Mr. Fox to “downplay all the heavy weaponry.” It is important to be “very careful with raw information, raw data,” information that had not been authenticated.

Chief Superintendent Coles suddenly ended the telephone conversation and told Ron Fox he would call him back from another line. The Chief Superintendent left the command post where he and Inspector Carson had been speaking to Mr. Fox, and he walked to the police detachment. Neither Chief Superintendent Coles nor Ron Fox could recall at the hearings whether the second conversation took place. It is most unfortunate that neither the OPP Chief Superintendent nor Ron Fox could remember why the call abruptly ended at the command post or whether a second conversation took place.

As a result, much speculation and skepticism has surrounded the exchange between Chief Superintendent Coles and Ron Fox. As mentioned, in order to promote the objectives of transparency and accountability, there ought to be a written record or a recording of the conversations that took place.

In my view, Mr. Fox, seconded to the Ministry of the Solicitor General, should not have communicated directly with Inspector Carson or other officers at the Ipperwash command post. As an OPP officer seconded to the Ministry of the Solicitor General, Mr. Fox was outside the OPP chain of command and should not have had contact with police involved in the operation. Information and decisions should have been conveyed to the Deputy Solicitor General who, in turn, would decide which information was appropriate to transmit to the OPP Commissioner.

I do not think it is appropriate for OPP officers seconded to the government to have direct contact with Incident Commanders during a police operation. This is fundamental, not only to avoid political interference in police operational decisions, but also to prevent the perception of political interference. The need to follow proper ministerial lines of authority and the OPP's regular chain of command is also important to ensure accountability. As mentioned, written protocols should be prepared on the appropriate role and channels of communication of OPP officers seconded to the government.

Even though Inspector Carson had these conversations with Ron Fox, the Incident Commander's decision to mobilize and deploy the CMU and TRU toward Ipperwash Park on the night of September 6 was not a result of political direction or interference by the Ontario government. From the conversations Inspector Carson had with various police officers, Mr. Fox, his superiors, and others, it is evident that John Carson understood the separation of government from police tactical decisions, and he attached little importance to the comments conveyed by Mr. Fox to him on the government's view of the Ipperwash Park occupation. He also remained committed to the objective in Project Maple of negotiating a peaceful resolution. Inspector Carson demonstrated considerable integrity in resisting the political pressures conveyed to him by Mr. Fox. A less experienced officer may have been influenced by news of the Premier's displeasure and expectations that the occupiers be removed quickly.

The Incident Commander had no intentions of allowing his officers to enter the provincial park. Inspector Carson was waiting for the injunction

application to be made to the courts before the OPP made any decisions regarding the occupiers at Ipperwash Park.

MISCOMMUNICATION AND POOR INTELLIGENCE

Before Inspector Carson went off duty in the early evening of September 6, he asked A/D/S/Sgt. Wright to drive to Port Franks. The OPP had information that local residents and cottagers were planning to gather in the Port Franks area to discuss the park occupation. Mark Wright drove through Port Franks, trying to find this meeting. He continued his search for this meeting until he received a call that community members were gathered in the MNR parking lot near Ipperwash Park.

When A/D/S/Sgt. Wright arrived at the MNR parking lot, he was surprised to see a gathering of about thirty to forty men, women, and children. Mayor Fred Thomas was amongst the cottagers and residents from the community. Mark Wright introduced himself to the group and learned that they were preparing to march to the park to express their frustration with the First Nations occupation. A/D/S/Sgt. Wright persuaded the local residents not to march to the park. He told them it was dangerous and the OPP could not guarantee their safety. Wright encouraged people to return to their homes. He did not leave the area until he was “absolutely sure the last person who was there was gone.”

A/D/S/Sgt. Wright left the MNR parking lot at about 7:30 p.m. He drove on East Parkway Drive toward Army Camp Road. As he approached the curve where the two roads meet, Mark Wright saw eight to ten Aboriginal males standing in the sandy parking lot, outside the park fence line. About four of them held clubs, sticks, bats, or axe handles.

One of the Aboriginal men approached the roadway and stood about three to five metres from A/D/S/Sgt. Wright’s car. He held what appeared to Wright to be a bat in his hand. When Mark Wright asked the man what the group was doing, the Aboriginal man told him to leave. When A/D/S/Sgt. Wright asked if he could enter the sandy parking lot, he said that the Aboriginal men tapped their clubs, bats, or axe handles into their open palms.

A/D/S/Sgt. Wright clearly considered the encounter “confrontational.” These Aboriginal men were on public property, they had denied him access to the sandy parking lot, and some held clubs, bats, or axe handles.

When Mark Wright arrived at Checkpoint “D” on Army Camp Road and Highway 21, there was a radio transmission from Checkpoint “C” (Army Camp Road across from Sunnyside Trailer Park) that a civilian’s car had been damaged by a rock thrown by “Natives on the road.” A/D/S/Sgt. Wright instructed Constable Poole to take a statement from that person.

As A/D/S/Sgt. Wright continued his journey to the command post, he realized the Emergency Response Team (ERT) night shift was replacing the day shift. He contacted Sergeant Korosec and told him to “hold back” the day shift. Wright believed that the situation with the First Nations occupiers was escalating and he thought the Incident Commander might want additional officers that evening.

A/D/S/Sgt. Wright met with Inspector Linton when he arrived at the command post. Sergeant Korosec was present. He described the Aboriginal people on the roadway, a number of whom had bats and axe handles, and he explained how he had been denied access to the parking lot. The officers also discussed the damage to a car caused by the First Nations people.

Inspector Linton, who was the Incident Commander when Inspector Carson was off duty, thought it was time to take the “B team with helmets and K-9” to the site of these encounters. Inspector Linton wanted the officers and the canine unit to deal with the Aboriginal people who were outside the park fence.

Despite Inspector Linton’s initial decision to wait for Constable Poole’s statement to reach the command post before OPP officers were mobilized, this in fact did not occur. Instead, Inspector Linton decided to call in the Tactics and Rescue Unit (TRU) before he received accurate information on the incident involving the damaged car. He clearly acted precipitously and without proper intelligence.

THE ALTERCATION BETWEEN STEWART GEORGE AND GERALD GEORGE

In the early evening of September 6 before 8:00 p.m., Gerald George drove toward the army camp and the park. Mr. George was a Councillor of the Kettle and Stony Point Band. He travelled along East Parkway Drive in his sister’s blue Grand Am Pontiac car. As he approached the intersection of East Parkway Drive and Army Camp Road, he saw some of the occupiers in the sandy parking lot, one of whom was Stewart George.

In a letter to the editor of the *Forest Standard* newspaper at the end of August, Gerald George had criticized the occupiers for taking control of the army barracks and he referred to them in derogatory terms, such as “animals” and “army camp Indians.” Stewart George, one of the occupiers who was in the sandy parking lot at that time, was upset that Gerald George had the audacity to approach the occupiers. The insulting comments about the occupiers and his Stoney Point ancestors angered Stewart George. An altercation occurred between Stewart (“Worm”) George and Gerald George. Stewart George slapped the side of Gerald George’s face. As Gerald George was leaving the area in his car, he yelled, “Worm, you’re going to get it.” Stewart George threw a rock and hit the car, denting the back panel under the rear window on the driver’s side of the vehicle.

Gerald George approached the OPP officers stationed at Checkpoint “C.” Constable Sam Poole took a statement from Gerald George. Not all the information conveyed by the Kettle and Stony Point Councillor was recorded in the police statement. The OPP officer deliberately omitted the description of weapons Mr. George claimed were in the possession of the occupiers. According to Constable Poole, Gerald George said the occupiers had “AK-47s with a 30 round mags duct taped to the back,” “Mini Ruger 14s,” and “hunting rifles.” Detective Constable Dew continued the police interview with Mr. George.

When Detective Constable Dew drove to meet Constable Poole and Gerald George, he stopped at Checkpoint “D” at Army Camp Road and Highway 21. ERT officers at this checkpoint told Dew that “women and children were leaving ... because there was going to be trouble” that night. Detective Constable Dew communicated this information to the command post.

Because First Nations people believed the OPP were planning to confront the occupiers at the park, it was suggested that the women and children leave Ipperwash Park. The OPP believed this evacuation of women and children signified that the Aboriginal occupiers had plans to engage in aggressive activities that night.

The police statement taken by Constable Poole relating to the Gerald George car incident did not make its way to the command post until it was too late. This event highlights why this police operation would have benefited from a proper intelligence process. As Detective Sergeant Bell testified, all raw data should have been collected and analyzed by an intelligence officer who would have seen the competing versions of events and ensured that the correct version (the statement taken by Constable Poole) was communicated to the

Incident Commander. Another fundamental problem was that the information about guns was not authenticated or verified by OPP intelligence officers.

Gerald George told Detective Constable Dew that the occupiers had guns. He described the different firearms, and he also said the occupiers were making Molotov cocktails. In his notebook, Detective Constable Dew recorded a description of the weapons conveyed by Gerald George, but referred to him as an “anonymous source.”

Detective Constable Dew was not aware that Gerald George had recently written a letter to the local newspaper criticizing the occupiers. Nor was he aware of the tension between the Chief and Council of the Kettle and Stony Point Band and the occupiers at the army base and the provincial park. Detective Constable Dew did not read Gerald George’s statement that was taken by Constable Poole. This was critical to evaluate the information relayed by Gerald George. Had a trained OPP intelligence officer been on duty, the officer could have taken measures to follow up and verify the statements made by the Band Councillor. At this point, the reliability of Gerald George’s statement would have been questioned.

Detective Sergeant Bell said that if he had known this informant had in the past publicly expressed disapproval of the occupiers and called them derogatory names, this would have had an impact on the assessment of the reliability of the evidence.

Neither Inspector Carson nor Inspector Linton read Gerald George’s statement to the police. These OPP Inspectors did not receive accurate information on what transpired that night between Mr. George and the occupiers. The verbal transmission of this incident within the OPP distorted the information relayed by Gerald George to OPP officers Poole and Dew. Clearly this failure in OPP intelligence that evening resulted in faulty and precipitous decisions at the command post.

There was no standard written protocol with respect to intelligence reports. Verbally conveyed intelligence can result in inaccuracies and a “broken telephone” scenario, which is precisely what occurred the night of September 6. Had information from Gerald George relating to the car incident been transmitted in written form on the evening of September 6, it would have minimized the incorrect information relayed to senior officials and to the Incident Commander who was responsible for making the decision to deploy the CMU and TRU to the vicinity of Ipperwash Park. Similarly, had the Gerald George

information regarding the existence of guns in the park been transmitted to an intelligence officer, it would have been assessed from a reliability perspective. Had Detective Sergeant Bell known the Band Councillor had provided the information about the weapons and the circumstances surrounding it, he would have considered its value of “limited weight.”

The lack of one officer to communicate the processed intelligence to the Incident Commander, inadequate analysis of information received by the OPP, no intelligence training of the Incident Commander, and raw information communicated to the command post from an array of sources are some of the deficiencies in the OPP operation in Ipperwash that undoubtedly contributed to this tragedy.

Before sunset, First Nations people in Ipperwash Park became increasingly anxious about the OPP’s plans for that evening. The occupiers decided it would be good to have walkie-talkies and scanners to listen to police communications at the park that evening. Cecil Bernard George retrieved some of these supplies from Kettle Point. Other occupiers returned to the barracks to get a spotlight to illuminate police officers in the vicinity of the park. The occupiers built bonfires and collected rocks and sticks, placing them inside the park at the fence line in order to defend themselves from the police if this became necessary.

First Nations people were stationed at different observation points in the park as “look-outs.” Their role was to report back to the other occupiers on the OPP’s activities.

The Aboriginal people were very anxious, not knowing what the police intended to do that evening. Many of the Aboriginal people believed the OPP were planning to remove them from the park.

The mood and atmosphere clearly changed at the park on the evening of September 6, 1995. The occupiers believed the heavily armed OPP would confront them that night. Unfortunately, their fears were realized.

The OPP observed much of this activity and it increased their concern that the occupiers were planning “offensive” activities for that night. The large bonfires, the activity in the kiosk, the movement of the cars and dump truck between the park and the camp, and other actions by the Aboriginal people reinforced their belief. The Aboriginal people were deliberately trying to create the illusion that there were many more occupiers in the park than there actually were. These actions caused the police to believe the Aboriginal people

intended to engage in “offensive” activities when, in fact, they were simply making “defensive” preparations for a move by the OPP on the First Nations occupiers. Unfortunately, there were serious miscommunications and misunderstandings not only by the Ontario Provincial Police but also by the Aboriginal people.

While Inspector John Carson was having dinner at a private residence in Forest, A/D/S/Sgt. Wright contacted the Inspector to inform him of the escalating events at the park that evening.

Mark Wright was concerned about the first cottage west of the sandy parking lot on East Parkway Drive. He was also worried that the cottagers who had been carrying signs in the MNR parking lot that evening would return and confront First Nations people in the park. A/D/S/Sgt. Wright believed the occupiers had committed a number of criminal offences, that public order had been threatened, and that the police “needed to deal with this immediately.”

A/D/S/Sgt. Wright was agitated with the “confusing mixed messages from Inspector Linton,” whose first instructions were “we were going to go down there” with “helmets and K-9,” to “we’re not going to do anything because they’re not doing anything wrong if we can’t identify the individual who did the damage to that vehicle.” A/D/S/Sgt. Wright believed the situation was escalating and felt that the OPP “needed to deal with this quickly.”

But why did the OPP need to deal with this quickly? It was essential that the OPP obtain accurate information regarding the damaged vehicle before it made these decisions. A/D/S/Sgt. Wright’s reaction was to act before the OPP had verified the information and received proper intelligence.

Inspector Carson made it clear in his call with A/D/S/Sgt. Wright that if Inspector Linton wanted him to return to the command post, he must specifically make that request. But then Mark Wright lowered his voice and said, “[H]e’s calling out TRU.” Inspector Carson said that if Inspector Linton is calling out TRU, he wanted to be notified. Inspector Carson was very troubled by Inspector Linton’s decision. He could not understand Inspector Linton’s decision to use TRU. Inspector Carson believed that the ERT team were the appropriate officers to arrest Aboriginal people who refused to leave the sandy parking lot. TRU officers are trained in the use of fairly sophisticated weapons and it is the unit of last resort. As Inspector Carson explained, “it’s a matter of using the right tools for the right job.”

When Inspector Linton made contact with Inspector Carson at about 8:20 p.m., he said, “[W]e’re heating up big time. I just thought I would let you know ...” Inspector Linton described “about eight guys on the road,” the damaged car, and said they were waiting for the statement from the victim. It is clear from this call that Inspector Linton mistakenly believes the victim is female when, in fact, it is Band Councillor Gerald George.

There were several reasons Inspector Carson tried to persuade Inspector Linton to change his mind. First, the TRU team is “the tool of last resort. It’s the most offensive skill set that we have available to us.” In Carson’s view, the events at Ipperwash required the “response of the uniform officers of ERT,” not the TRU team. Second, Inspector Carson was worried that “bringing the TRU team trucks up, the big cube vans with ‘police’ all over them, was going to attract an unnecessary amount of attention and escalate the tension in that area that already exists.”

Inspector Carson thought the TRU officers should remain in reserve in the event the ERT team required assistance. He suggested the nearby cottages be evacuated if Dale Linton was concerned about residents adjacent to the sandy parking lot. Inspector Linton decided to heed to Inspector Carson’s advice and leave the TRU officers in Pinery Park.

Inspector Carson drove to the OPP command post shortly after the call and arrived before 8:30 p.m. He did not see Gerald George’s statement when he returned to the command post that evening. Had he read Mr. George’s statement, he would have learned that a single rock, not a stick or a bat, caused the damage to the car. On the night of September 6, Inspector Carson believed a female was driving the car and that her vehicle had been struck with bats. After Dudley George’s death, he learned that this information was inaccurate — that in fact a male was the driver of the car, a single rock caused the car damage, and it was an altercation between two Aboriginal people, a Band Councillor and a Stoney Point occupier.

This incident was important in the decision to deploy the police to the sandy parking lot. It was a critical factor that resulted in OPP officers marching down East Parkway Drive toward the Aboriginal occupiers in Ipperwash Park that evening. This decision by the OPP was based on inaccurate and unverified information.

On the evening of September 6, the decision was made to mobilize the Crowd Management Team (CMU) to clear the parking lot, and to use the TRU

team to provide “the visuals” and “cover for the crowd management team.” Surprisingly, the scribe notes do not contain a record of the time this decision to mobilize the CMU was made, which Inspector Carson could not explain.

The OPP’s record-keeping and notes were generally not of a high standard in the Ipperwash operation. Important information such as the time of the Incident Commander’s decision to mobilize the CMU is noticeably absent from the scribe notes. There are also inconsistencies between the typed scribe notes and the handwritten scribe notes. Moreover, OPP officers often did not record information in their notebooks at the time of the event or before their shift ended.

It is fundamental that accurate detailed notes be recorded by the OPP at the time of the events. The OPP should continue to implement measures designed to ensure an accurate transcription of events. OPP Commissioner Boniface testified that scribe note-taking has improved since September 1995. For example, there is scribe training, and the Incident Commander must initial each page of the scribe notes to verify its accuracy. Police officers must also complete their notes before their shift ends, unless they receive permission to do otherwise. Such measures promote accuracy and minimize contamination of the information.

At approximately 8:36 p.m., Inspector Carson contacted Acting Sergeant Ken Deane and told him to “hold the team down.” But it was too late — TRU Leader Kent Skinner and Ken Deane were pulling into the OPP Forest Detachment. The rest of the TRU team was in Northville at the time, less than twenty kilometres from the OPP Detachment. The TRU team had three cube vans, gun trucks, with “Police” inscribed on the side of the vehicles. John Carson instructed Acting Sergeant Deane to “take the gun trucks back” to Pinery Park, to send Kent Skinner to the command post, and to “get an Oscar Team ready.” “Oscar team” was a term for the ERT observation team. “Sierra team” was the TRU observation team.

A few minutes after 9:00 p.m. on September 6, the OPP closed the roads leading to Ipperwash Park.

In Acting Staff Sergeant Skinner’s view, the probable existence of firearms, the damage to the “civilian” car, and the reports of automatic gunfire increased the risk “substantially.” Kent Skinner did not know there were inaccuracies in the information relayed and that these reports had not been authenticated.

This was a critical failure on the part of the OPP. There was a failure in OPP intelligence—the information coming to the command post was not analyzed, assessed, or designated on the scale of reliability. The TRU Team was sent to

the sandy parking lot outside the park later that night with mistaken and unverified information. The OPP's assessment of the risk at the park was incorrect. This mistake had severe and tragic repercussions.

CMU leader Staff Sergeant Lacroix was operating under very different information than TRU regarding the risk of firearms when his officers marched down East Parkway Drive that night toward the sandy parking lot. The TRU leader and officers on the TRU team believed it was a probable risk that the occupiers in Ipperwash Park had firearms. Failed intelligence and miscommunication led to tragic consequences.

Staff Sergeant Lacroix received a briefing from the Incident Commander in the command trailer. He was told a "civilian motorist had had his car pelted with stones and hit by baseball bats" as it attempted to pass the park. Again this unverified and unreliable information was relayed to the officer who would lead the CMU that night down East Parkway Drive to Ipperwash Park. It was Staff Sergeant Lacroix's understanding that this was a trigger event to call out the CMU.

Staff Sergeant Lacroix was instructed to command the CMU and to move the demonstrators back into Ipperwash Park. He was advised to "hold a position at the park boundary until relieved by uniformed personnel and [a] checkpoint could be set up." Staff Sergeant Lacroix was also instructed to "arrest any demonstrators" who refused to leave the sandy parking lot for unlawful assembly and mischief. At no time was there any discussion in this briefing with Inspector Carson about using a megaphone to inform the occupiers that they should return to the park. Another missed opportunity to convey this critical message to the Aboriginal people and to inform them that the OPP had no intentions of entering the park. The OPP's lack of communication in this operation was a very serious failing. The OPP should have communicated to the occupiers that they should remain in the park and that the police would not enter Ipperwash Park. The Aboriginal people firmly believed the OPP's intention that night was to march into the park and arrest any occupier who refused to leave the park site.

There were thirty-two officers in the CMU that night, including Staff Sergeant Lacroix and Sergeant Hebblethwaite. An additional eight officers were assigned as an arrest team. There were also two canine teams and two prisoner vans.

Staff Sergeant Lacroix had no information that night that the CMU would be used as a diversion to enable TRU to get into position so the Sierra team could gather intelligence as to whether the occupiers had firearms. In his

view, that was not a proper use of the CMU. Nor did Staff Sergeant Lacroix have information that night that there were concerns the occupiers had firearms. At his briefing with the Incident Commander before leaving for TOC, there was no discussion that the occupiers possibly had guns.

As Staff Sergeant Lacroix testified, the CMU was not designed to march down the road in darkness to the sandy parking lot if members of the TRU team believed there was a fairly reasonable probability of weapons at the park fence. In my view, it is a tragedy of errors that in the OPP mission that night, the CMU commanders and the TRU Leader were operating on different information.

It was Inspector Carson's hope and expectation that when the CMU marched down the road to the sandy parking lot, the occupiers would move back into the park. However, the Aboriginal occupiers did not understand the OPP's intentions. They believed the OPP was preparing for a confrontation and would enter the park and arrest them. They themselves were preparing that night for the heavily armed police officers in grey uniforms. They collected rocks, sticks, and stones, they carried baseball bats, they put gas in the school bus and drove it and other vehicles to the park, they assigned occupiers to particular areas as "look-outs," and the Aboriginal people listened on the scanner for the approach of the police to Ipperwash Park.

Had the OPP appointed a negotiator such as Bruce Elijah, Robert Antone, or Cyndy Elder, had the OPP earlier in the day stood outside of the park fence and yelled the message, used a megaphone, or inserted written pamphlets through the park fence that made it clear the occupiers must remain in the park and that the police had no intentions of entering the park, the confrontation might not have occurred on the night of September 6. These simple, uncomplicated measures would have likely averted a tragic situation.

THE UNINTENDED CONSEQUENCES OF PRECIPITOUS ACTION: CONFRONTATION BETWEEN THE OPP AND THE FIRST NATIONS OCCUPIERS

Staff Sergeant Lacroix drove to the Tactical Operations Centre at the MNR parking lot with Sergeant Hebblethwaite. The night of September 6 was the first time Wade Lacroix was senior commander of the Crowd Management Unit (CMU), it was the first time the newly constituted CMU had been deployed, and it was the first time the CMU's new tactics were used. It was also the

first time Inspector Carson had used a Crowd Management Unit, and the first time the CMU and TRU were jointly deployed.

The CMU Commander was confronted by many surprises that night when he and over thirty of his officers marched in darkness to the park. A question repeatedly asked is what was the urgency for the CMU deployment, and why did the OPP march toward Ipperwash Park in darkness on the night of September 6?

A combination of factors led Inspector Carson to decide to deploy the CMU to the sandy parking lot outside Ipperwash Park. Unfortunately and tragically, much of the information on which he relied had not been analyzed or verified. The decision to deploy his officers was based in large part on erroneous information. The OPP's failure to communicate with the Aboriginal people from the inception of the occupation led the occupiers to believe the large number of police in the vicinity of the park were planning to enter the park, arrest them, and place them in custody. The OPP had a critical opportunity that night to make it clear to the occupiers that they had no such intention. But that did not happen.

A critical factor in Inspector Carson's decision to deploy the CMU was the inaccurate information that the occupiers had hit and damaged a car with baseball bats. John Carson agreed that someone throwing a stone at a car is substantially different than a report that a private citizen's car has been beaten with baseball bats. Inspector Carson continued to mistakenly believe a car driven by a civilian had been damaged by bats, when in fact one occupier had thrown a rock at a car driven by Councillor Gerald George. It was a minor altercation between Aboriginal people. The poor intelligence in the police operation led the OPP to make mistakes that had serious and lasting repercussions. John Carson relied on this unauthenticated information in his decision to deploy the Crowd Management Unit to the park that night.

The OPP also mistakenly believed the occupiers had built a fire in the sandy parking lot, and that it threatened the safety of the nearby residents and cottages. An Oscar ERT observation team officer had transmitted this erroneous information to the command post. The OPP relied on erroneous information in its decision to mobilize the officers that night. The two bonfires were in the park, near the beach and near the turnstile.

Although Inspector Carson believed there was a possibility the occupiers had firearms that evening, he thought the risk was small. Unfortunately, Acting

Staff Sergeant Kent Skinner and his TRU team had received information which resulted in a much higher and erroneous assessment of the risk of firearms in the possession of the occupiers at the park. If John Carson had thought there was a serious danger the occupiers would fire guns on the CMU as it marched down the road to the sandy parking lot, he would not have deployed the CMU that night.

Inspector Carson decided to deploy the CMU and TRU to ensure the occupiers did not move outside the park to the municipally owned parking lot, to the road, or to the privately owned cottages. Again this crucial information was not conveyed to the Aboriginal people.

Inspector Carson knew that deploying the CMU in darkness was not an optimal situation. He would have preferred the deployment to occur in daylight with a helicopter overhead and a video of the area, but he felt events were out of his control. He was off duty at a friend's home for dinner when some of the “escalating” incidents took place — the Stewart George-Gerald George incident, Mark Wright's encounter with the Aboriginal people at the intersection of East Parkway Drive and Army Camp Road, and Inspector Linton's decision to call out TRU. Inspector Carson said, “it was chaos” when he returned to the command post that night.

Inspector Carson and TRU Leader Kent Skinner were stationed in the front seat in the TRU van during the OPP operation. There were two radio sets in the TRU van — one for the CMU on TAC (the Total Access Channel), and one for the TRU team.

All CMU members were dressed in hard Tac equipment — shin guards, thigh guards, forearm guards, a helmet, and a visor. The arrest team was positioned at the rear of the CMU. They wore the same uniform as the CMU members but did not carry shields.

A number of officers who testified at the hearings described their anxiety regarding their mission and the deployment of the CMU to the sandy parking lot. The darkness caused additional risks and challenges in terms of visibility, which concerned CMU officers. There was very little lighting at the sandy parking lot and in the vicinity of the park. Most of the officers did not have night vision equipment.

TRU had two important roles. One role was for the Sierra teams to provide intelligence on activities at the park kiosk, the sandy parking lot, and at the intersection of East Parkway Drive and Army Camp Road. The two Sierra teams were to be invisible. TRU's second role was to provide cover for the Crowd Management Unit when it was deployed to the sandy parking lot.

TRU officers had an elevated and mistaken assessment of the risk that First Nations people had weapons in the park. When Acting Staff Sergeant Skinner briefed the TRU officers, he relayed the inaccurate and unverified information that he had received. He told the TRU team that the occupiers had trashed a civilian's car with baseball bats, and it was possible that the occupiers had a number of assault weapons. Ken Deane and the other TRU officers believed that the OPP were facing a situation that evening where Aboriginal people could be armed with AK-47s, hunting rifles, and Molotov cocktails.⁶

As mentioned, Cecil Bernard George had brought a scanner to the park to pick up police communications. After September 6, Inspector Carson learned that the Aboriginal people at the park were listening to police communications on the scanner.

In my view, the ability of the occupiers to listen to the OPP communications on the scanner significantly heightened the anxiety of the First Nations people and escalated the tension at Ipperwash Park. It could have also compromised the safety of the officers. Information on the positioning of the OPP officers, intelligence on the occupiers, and tactical decisions of the police is information that the Aboriginal people should not have been able to pick up on their scanner. The OPP should take measures to ensure that communications between officers regarding tactical decisions and intelligence are secure and not subject to interception by others.

Before the CMU started down East Parkway Drive, neither the leader of the CMU nor his second in command Sergeant Hebblethwaite were told of a report about AK-47s, Mini Rugers, or gas bombs in the park or army camp. Had this information been confirmed as reliable by OPP intelligence, Staff Sergeant Lacroix “would have stood the CMU down.” The CMU deployment would have been cancelled. The CMU was not equipped “for gunfights”; this was “completely outside” the CMU’s mandate.

Before the CMU was deployed, Staff Sergeant Lacroix was also told a bonfire was in the sandy parking lot — more inaccurate information.

At the CMU briefing conducted by Staff Sergeant Lacroix at TOC, officers received explicit instructions that under no circumstances were they to enter Ipperwash Park. The CMU’s role was to clear the Aboriginal occupiers from

6 Ken Deane testimony before Fraser J., Ontario Court (Provincial Division), on April 8, 1997. Ken Deane was charged with criminal negligence causing the death of Dudley George.

the sandy parking lot and the road intersection at East Parkway Drive and Army Camp Road.

The TRU Alpha team, consisting of Acting Sergeant Deane and Constables Beauchesne, Klym and O'Halloran, was deployed slightly ahead of the CMU. They were instructed to walk ahead of the CMU to assess the area, to “be a set of eyes in advance” of the CMU and “scope out the area.”

At approximately 10:27 p.m., the CMU marched from the MNR parking lot down East Parkway Drive toward the park in box formation.⁷ There were thirty-two officers. An additional eight-officer arrest team was in the rear. Two canine teams and two prisoner vans followed the arrest team.

The Aboriginal people became increasingly anxious as the police approached the park. The occupiers saw the OPP dressed in “riot” gear, standing shoulder-to-shoulder in rows and stretched across the road. This was a very intimidating sight for the occupiers. The police officers were equipped with bulletproof vests, shields, batons, helmets, and guns. The Aboriginal people had no protective clothing and had simply stockpiled rocks and sticks and stones on the inside border of the park fence. The Aboriginal people had no body armour or head protection. They also felt greatly outnumbered. As the police officers marched toward Ipperwash Park, the First Nations people were anxious and terrified.

Sergeant Lacroix and Sergeant Hebblethwaite stood side-by-side, yelling commands and communicating what they saw as they approached the park. As the CMU entered the sandy parking lot, Staff Sergeant Lacroix manoeuvred the CMU from its box formation into the more expansive cordon formation. As the CMU came to a halt, the last few occupiers walked through the turnstile into the park. The CMU moved up to the fence line and the officers were then ordered to move back toward East Parkway Drive. Staff Sergeant Lacroix thought his “mission to clear the sandy parking lot” was complete.

Sergeant Hebblethwaite radioed to TOC: “The badgers are within the bounds of the park. The badgers are in the park.” In police parlance, “badgers” meant “suspects.” Sergeant Hebblethwaite was communicating to TOC that the First Nations occupiers had returned to the park.

7 The box formation is used to travel quickly down a road. The contact squad is the first line of the formation, followed by the left cover squad, the right cover squad, and lastly the arrest team. The officers in this formation are very close together.

At no time did the CMU convey to the Aboriginal people that if they remained in the park, there would be no confrontation with the police. Nor did they tell the occupiers the OPP had no intention of entering the provincial park. The CMU officers did not have a megaphone to communicate these critical messages to the First Nations people. John Carson agreed, with the benefit of hindsight, that the use of a megaphone could have had “some value.” Nor did the police use their voices to yell this important message to the occupiers. The CMU were busy yelling commands to each other when the officers should have been yelling these crucial messages to the Aboriginal people.

The occupiers were convinced the police with their riot gear would march into the park and remove and arrest them for occupying the provincial park. There was clearly miscommunication on both sides.

No officers saw firearms amongst the Aboriginal people.

About twenty to twenty-five occupiers were in the park at that time. This was intended by the Aboriginal people to be a peaceful occupation. The occupiers threw burning sticks, rocks, and other items at the CMU. The Aboriginal people in the park were “angered” by the police presence, their riot gear, and their intimidating actions.

As Cecil Bernard George stood by the turnstile inside the park, his fear began to dissipate and his anger deepened.

After the police retreated from the park fence, Stewart George’s black dog, who was barking at the turnstile, walked into the sandy parking lot toward the officers. One of the officers kicked the dog. David George saw the dog spinning in the dirt.

Cecil Bernard George picked up a steel pipe. He described how he walked into the sandy parking lot with the pipe in his hands, believing he must defend his family and friends.

Staff Sergeant Lacroix and the CMU team heard Cecil Bernard George and Aboriginal people yell, “[Y]ou’re standing on sacred ground,” and “[O]ur grandfathers fought for this land,” and “[G]et back on the Mayflower.” Sergeant Hebblethwaite also heard a “voice” say that his grandfather was buried on the property, and that it was Aboriginal land. That voice belonged to Cecil Bernard George.

Until this time, Staff Sergeant Lacroix did not know the occupiers considered the park sacred ground. The CMU Commander did not understand that this was a reason for the occupation of Ipperwash Park. He did not adequately

understand the history and the culture of these Aboriginal people, or that the tactics traditionally employed on an unruly soccer crowd were not appropriate in an Aboriginal context. He expected the occupiers to react like a soccer crowd. He did not understand the Aboriginal people's connection to the land and the significance of their assertion that burial grounds, sacred sites, were in the park. Many of the occupiers were related by blood — brothers, sisters, cousins, uncles. Family and friends participated in this occupation, not strangers in a soccer or hockey crowd. The CMU Commander did not understand the context of this Aboriginal protest or the issues confronting the Stoney Point people. Another fatal deficiency in the OPP operation.

The Aboriginal occupiers in the park then heard a voice order “*punchout*,” and the police advanced at a fast pace into the sandy parking lot, beating on their shields. The “punchout” is a tactic where the CMU officers ran toward the occupiers and yelled with shield chatter, and its purpose was to intimidate the occupiers and have them return to the park. Inspector Carson explained at the hearings that the philosophy of a punchout is to frighten protesters, have them retreat, and arrest any protesters who remain at the site.

On Staff Sergeant Lacroix's instructions, the CMU ran toward Cecil Bernard George. At approximately 10:58 p.m., physical contact was made with the Aboriginal people.

Staff Sergeant Lacroix described a male with a steel pole, about six feet in length, running toward him. The swinging pole made contact with Staff Sergeant Lacroix's Plexiglas shield, the edge of his helmet, and his shoulder. The Plexiglas shield broke in half. With his baton, Staff Sergeant Lacroix struck the man's left clavicle shoulder-tip area. The Aboriginal man dropped the pole and fell down. Sergeant Hebblethwaite saw a person on his back on the ground, his arms and legs flailing. A group of officers were bent over him. Staff Sergeant Lacroix could not identify the man who struck his shield other than that he was five foot ten or five foot eleven inches — he was a “silhouette.” That “silhouette” was likely Cecil Bernard George.

Cecil Bernard George felt the officers hit and kick him and he believed the police were determined to “kill” him. He tried to get away, but the police continued to hit him. Gina Johnson, Cecil Bernard George's sister, watched the police beat her brother. She started to scream. Cecil Bernard George was kicking and trying to “get away” from the police. As they watched Cecil Bernard being beaten by the police from inside the park fence, the Aboriginal occupiers quickly decided to heed Gina's plea.

About fifteen occupiers emerged from the park into the sandy parking lot, carrying sticks, clubs, and poles. Their purpose was to rescue Cecil Bernard George from the police beating.

Cecil Bernard George was excessively beaten on his head and face by the OPP.

Unfortunately, neither the uniforms nor the helmets displayed the officers' names or badge numbers. Therefore, the identity of the officers who kicked and hit Cecil Bernard George with their batons was not easily discernible. It would have been advantageous to have the name of the officer inscribed on his clothing or helmet.

As the CMU members moved forward toward the park fence in the punchout in which Cecil Bernard George was arrested, the occupiers and officers made contact and a number of confrontations took place simultaneously. The Aboriginal people threw rocks and pieces of wood at the police officers, and hit the officers' equipment such as shields with their baseball bats.

Four officers took an arm or leg of Cecil Bernard George and moved him out of range of the projectiles. Mr. George was carried to the rear of the CMU and placed near the prisoner van.

An Aboriginal occupier yelled, "[G]et that bus over there. Get that bus out there." The decision to drive the bus into the sandy parking lot was to divide the police officers and to rescue Cecil Bernard George from the beating.

Sixteen-year-old Nicholas Cottrelle ran to the school bus and climbed into the driver's seat. Fourteen-year-old Leland White was panicked by the OPP's approach in riot gear and had sought refuge in the bus with his dog because he "felt safer there." Nicholas Cottrelle drove through the sandy parking lot in the direction of East Parkway Drive and toward the officers, trying to find Cecil Bernard George.

Staff Sergeant Lacroix and the other officers watched the bus move forward through the sandy parking lot toward the road. They watched the bus push the dumpster across the sandy parking lot in the direction of the officers. Staff Sergeant Lacroix yelled, "[S]plit formation," to move his officers off the road to enable the bus to drive through. But the bus drove near the fence where CMU officers were standing. Some officers tried to climb the fence, while others "tried to dive ... back towards the pavement." Sergeant Hebblethwaite was convinced "someone was going to be killed as the bus neared [their] men."

Acting Sergeant Ken Deane claimed he saw a muzzle flash originate from the interior of the bus as it drove past him on East Parkway Drive. It is my view

that the muzzle flashes Ken Deane claimed he saw did not originate from the interior of the bus. No other officer saw muzzle flashes emanate from inside the bus. The only two people in the bus were sixteen-year-old Nicholas Cottrelle and fourteen-year-old Leland White. Neither teenager was in possession of guns on the night of September 6.

Warren George ran to his car inside the park shortly after Nicholas Cottrelle started to drive out of the park toward the sandy parking lot.

Fran Hannahson, who was in the white cottage with her grandson next to the parking lot, heard the bus engine and something loud being pushed. It was the dumpster. She saw the bus gather speed as it left the park, and she saw figures running next to the door-side of the bus. She also saw the car drive from Ipperwash Park and thought that if the police did not jump out of the way, the vehicles would hit them. The bus and car disappeared from her sight. Ms. Hannahson was in a state of panic. She went to her grandson's bedroom and stood by the window.

Staff Sergeant Lacroix saw the car travel on the lake (north side) of East Parkway Drive in a westerly direction. It suddenly swerved toward about ten CMU officers. Staff Sergeant Lacroix was fifteen to twenty feet from the car with his weapon drawn. He saw the front of the car hit three of his officers and was determined to “stop” the driver of the car. Wade Lacroix fired “two to three rounds” down “into the driver’s compartment.”

Constable Beauchesne also “fired two rounds in very rapid succession” at the driver with his rifle.

At no time did Staff Sergeant Lacroix see any firearms in the car, nor did he see any Aboriginal person in possession of a gun that evening.

Nicholas Cottrelle stopped the bus on East Parkway Drive and tried to shift the gears into reverse. As he backed up in the direction of the park, he and Leland heard gunfire, and bullets hit the bus, shattering a window. Nicholas Cottrelle saw police and guns and felt a burn on his back.

From her cottage at 6842 East Parkway Drive, Mrs. Jago⁸ saw the yellow school bus and the car. She saw the OPP officers in grey uniform, and heard screaming, shouting, and gunfire. She also saw the bus go into reverse at the end of her driveway and she moved back from the window because of the danger.

⁸ Mrs. Jago's statement to the police was filed as an exhibit. Mrs. Jago died before she was scheduled to testify at the Inquiry

Acting Sergeant Ken Deane, who was on the north side of East Parkway Drive, walked in the direction of the park. He claimed he saw two muzzle flashes coming from the bush area.⁹ He saw a person walk onto the roadway with what he perceived was a firearm, and thought this person was possibly responsible for the muzzle flashes. The man who walked onto the roadway was Dudley George.

Acting Sergeant Deane claimed Dudley George shouldered a rifle in a half-crouched position, scanning the police officers. Deane claimed the gun was pointed in the direction of at least three OPP officers, on the inland side of East Parkway Drive, and that Mr. George's right hand was "up at the trigger group." Ken Deane testified that he believed Dudley George was "a millisecond away from shooting one of [the] officers." Acting Sergeant Deane discharged his semi-automatic gun. He fired three shots in rapid succession at Dudley George.

Ken Deane saw Dudley George falter, fall on one knee, spin to his right, and then spin to his left. He claimed Mr. George threw his rifle down in the area. Acting Sergeant Deane saw Aboriginal people come to Dudley's rescue and assist him back to the park. Constable Irvine, a member of the Sierra team, also saw Aboriginal people carry "a body" into the park. He thought this person was seriously injured and in need of immediate medical attention.

Sergeant George Hebblethwaite was standing nearby when the shots were fired at Dudley George. After watching the bus reverse toward the park, Hebblethwaite saw a man "at the elbow of the road fall to his right knee in a spinning motion." At no time did Sergeant Hebblethwaite see a firearm carried by Dudley George; in fact, at no time during the entire confrontation did Sergeant Hebblethwaite see any Aboriginal occupier carry a firearm.

Ken Deane claimed that Dudley George's gun fell to the ground after he shot him. Deane testified that he did not attempt to retrieve the rifle. The TRU officer claimed the rifle was on the ground at the intersection of Army Camp Road and East Parkway Drive, yet he left the rifle on the road. Deane made no attempt to tell TRU Constables Klym and Beauchesne, members of his Alpha team, that they were approximately twenty metres from the rifle allegedly carried and dropped by Mr. George, the man he just shot.

Based on my analysis of the testimony at the Inquiry, I do not accept Ken Deane's assertion that Dudley George threw his firearm on the ground.

9 Ken Deane died in a car accident shortly before he was scheduled to testify at the Ipperwash Inquiry. On April 28, 1997, he was convicted of criminal negligence causing the death of Dudley George.

I would have expected Acting Sergeant Deane to retrieve the rifle allegedly in Dudley George's possession to ensure other occupiers did not threaten the OPP officers with this gun. Nor did Deane say over the police communication system that a rifle was in the area that could constitute a threat to the OPP officers. Deane simply radioed Acting Staff Sergeant Skinner that an individual was down and an ambulance was needed. Ken Deane did not recall transmitting to the Tactical Operations Centre that a man with a long arm was trying to shoot at the police officers.

After carefully analyzing the evidence, I am confident that Dudley George did not have a gun on the night of September 6. Ken Deane's assertion that Dudley threw his rifle on the ground is implausible. Deane claimed that he did not retrieve the gun because he "did not think of the rifle at that time." Clearly, if Dudley George had a gun and threw it to the ground after he was shot, Deane would have considered it a threat to the other OPP officers. Another Aboriginal person could have retrieved the gun. Also, if the gun were on the ground, one would have thought Ken Deane would want the gun as evidence that a weapon had been in the possession of the Aboriginal occupiers that night. Dudley George did not have a rifle or firearm in the confrontation with the police on the night of September 6, 1995.

I accept the evidence of the Aboriginal people that the occupiers did not have guns at the park during the confrontation with the police. This was corroborated by the many CMU and TRU officers who testified at the Inquiry, other than Ken Deane who claimed Dudley George carried a rifle and Constable Cossitt who claimed a gun was in Warren George's car.

Several Aboriginal people who witnessed Dudley George being shot were immobilized by their state of shock. OPP officers were also extremely surprised and upset that a First Nations person had been shot.

As mentioned, several occupiers went to Dudley George after he was shot. Elwood George ran to Dudley, put his arm around him, and tried to help him move toward the park fence. Dudley George took two or three steps, became limp, fell to the ground, and collapsed. Elwood George yelled for help. Other First Nations people ran to assist and Dudley George was moved inside the park boundaries. Blood spread across Dudley's chest.

A car pulled up, driven by Robert Isaac. J.T. Cousins climbed into the back seat of the car, and other Aboriginal people lifted Dudley into the vehicle. They drove towards the army camp.

There was commotion as the Aboriginal people ran around to see if anyone else had been shot or seriously wounded.

Dudley George was transported in a car by his brother, sister, and J.T. Cousins to Strathroy Hospital.

First Nations people sat by the fire at the park store, “waiting for a word about Dudley.” The occupiers could not believe what had happened. They used the park phone to try to find out where Dudley was. Later that night one of Dudley’s relatives gave them the devastating news — Dudley was dead. The uncontrollable tears of the Aboriginal people flowed in Ipperwash Park.

AN ABORIGINAL PROTEST IS DIFFERENT THAN A SOCCER CROWD: LACK OF UNDERSTANDING OF ABORIGINAL HISTORY AND CULTURE

CMU Commander Staff Sergeant Lacroix had not been trained and did not appreciate that an Aboriginal protest is different than other crowds or groups. As he acknowledged at the hearings, the fact that it was Aboriginal people “from one community,” many of whom were “related” and who had a “common purpose, a common belief, an emotional belief,” had an effect on the reaction of “that crowd.” He agreed that “the tactics did not have the effect on the Aboriginal community that they do on coal strikers in England ... or a soccer crowd” or even a crowd at Nathan Philips Square in Toronto.

The Aboriginal people at Ipperwash Park were a different crowd. As the CMU Commander later learned, the Aboriginal occupiers “firmly believed that they were on sacred ground, they were of one mind, they were committed, they were family,” and this crowd “reacted very explosively very quickly.” It was only in hindsight that Wade Lacroix understood some of the “precipitating factors” were “historical,” “political,” and “racial.” The CMU Commander had no idea the occupiers thought the CMU would evict them from the park that night.

Aboriginal protests and occupations require unique police resources, strategies, and responses. The objectives of the police during Aboriginal protests and occupations should be to minimize the potential for violence and to facilitate constitutionally protected rights, including treaty and Aboriginal rights and the right to peaceful assembly. It is essential that police officers receive training in Aboriginal history, culture, and law. It is also very important that First Nation police services be involved in Aboriginal protests and occupations.

OPP officers at Ipperwash did not have an understanding of the fundamental differences between Aboriginal and non-Aboriginal protests and occupations. Marching down East Parkway Drive in riot gear with helmets, shields, batons and guns, approaching the fence of the park a few feet away from the First Nations occupiers, and other intimidating tactics such as shield chatter did not have the desired or expected effect on the Aboriginal occupiers. These police strategies and tactics did not work on the Aboriginal group. An understanding of the history and culture of the Aboriginal people and the presence of First Nation police services would undoubtedly have helped the OPP understand that the Aboriginal occupiers were not like a soccer crowd. The use of First Nation police services and mediators would have been more effective than the strategies, or what Aboriginal people described as “scare tactics,” employed by the CMU on September 6. This was another significant failing at Ipperwash.

THE PRECIPITOUS DECISION TO DEPLOY THE CMU AND TRU

Inspector Carson’s approach to the Ipperwash occupation, from its inception, was to move slowly — to inform the occupiers they were trespassing on provincial property, to try and negotiate with the occupiers, and to wait for the Ministry of Natural Resources to seek an injunction. This conformed to the objectives in Project Maple.

When the Incident Commander left the command post that evening to go to a friend’s home for dinner at approximately 7:00 p.m., he believed the situation was stable at Ipperwash Park. Inspector Carson was hopeful the injunction motion in Sarnia the following morning would resolve some of the issues surrounding Ipperwash Park.

But under Inspector Linton’s command that night, the situation at the park was perceived to be escalating — Mark Wright’s encounter with the First Nations people, the Gerald George/Stewart George incident, the occupiers’ preparation of the yellow school bus, the increased vehicular traffic, the movement of women and children out of the park, and the belief that a fire was burning in the sandy parking lot. When Inspector Carson was contacted at his friend’s home that evening, he tried to halt what he perceived to be Inspector Linton’s precipitous decision to call out the TRU team. Inspector Carson immediately returned to the command post, despite Dale Linton’s view that this was unnecessary.

When Inspector Carson returned to the command post that evening, “it was chaos ... There was a lot of information, a lot of discussion and a lot of things being shared back and forth.” Inspector Carson decided that night to mobilize the CMU and use TRU to observe and provide intelligence, and to cover the CMU.

In my view, the OPP acted with undue haste when it decided to mobilize and deploy the CMU and TRU in darkness on the night of September 6, 1995. The necessary time should have been taken to allow Constable Poole’s written statement of his interview with Gerald George to reach the command post. This would have cleared up the confusion and refuted the inaccurate report that the Aboriginal occupiers had beaten a female civilian’s car with baseball bats. Time should also have been taken to authenticate the unconfirmed report of Gerald George that there were guns in the park. And time should have been taken to verify whether there was in fact a fire built in the sandy parking lot.

John Carson described the TRU Team as the eyes of the Incident Commander. As he said at the hearings, the TRU team keeps the Incident Commander informed and apprised of events on an ongoing basis. But a problem on the night of September 6 was that the TRU Sierra teams had difficulty moving into position “to be the eyes.” When the CMU was initially deployed, one of the officers on the Sierra team alerted the Tactical Operations Centre that Sierra was not in position and did not yet have an “eye” on the park. Yet the CMU officers proceeded to march down East Parkway Drive to the sandy parking lot.

The OPP should have considered other options while it waited for confirmation reports of the Gerald George and the other incidents. For example, cottages in proximity to the park could have been evacuated while the OPP waited to authenticate reports concerning the activities of the occupiers, or to wait until daylight.

In my opinion, the inaccurate and unverified information received by Inspector Carson was responsible in large part for his decision to deploy the CMU and TRU. Had John Carson received better intelligence in the police operation, and had the police had better communications with the occupiers, the decisions made that night in the command post may not have occurred and the tragedy may have been averted.

Inspector John Carson was a conscientious and competent Incident Commander at Ipperwash during the September 1995 events. He is a man of integrity who clearly wanted the Aboriginal occupation to be resolved peacefully. But on the night of September 6, 1995, I believe it was a mistake to

deploy the CMU and TRU down East Parkway Drive toward the sandy parking lot.

CMU officers, dressed in hard Tac equipment with their helmets and shields, marched shoulder-to-shoulder in formation toward the park. There were thirty-two officers, an eight-man arrest team, two canine teams, and two prisoner vans. Several CMU officers were “nervous” as they marched toward the park in darkness. TRU officers walked ahead of the CMU with assault rifles and semi-automatic pistols, providing cover. The CMU leader yelled commands to his officers as the police marched toward the sandy parking lot. The Aboriginal people were terrified as they saw the officers dressed in “riot gear” marching toward the park. The Aboriginal occupiers were not armed.

The OPP’s plan to have the occupiers leave the sandy parking lot or to remove them if necessary, seemed to work. As the CMU advanced to the fence line outside Ipperwash Park, the Aboriginal people retreated from the sandy parking lot into the provincial park. As the CMU came to a halt, the last few occupiers walked through the turnstiles into Ipperwash Park. The CMU Incident Commander, Staff Sergeant Lacroix, thought the CMU’s mission was complete.

The OPP’s plan seemed to work, but only momentarily. An Aboriginal man subsequently identified as Cecil Bernard George, whose fear of the police had turned to anger, walked into the sandy parking lot waving a steel pipe. He yelled that the park property was Aboriginal land, and that his grandfather was buried on this land. CMU officers had backed up at this time to Army Camp Road. The CMU Incident Commander yelled “punchout.” CMU officers ran toward Cecil Bernard George and a confrontation ensued between the OPP and the First Nations occupiers. The police fired their guns during the altercation, and Dudley George, a thirty-eight-year-old occupier, was shot and killed.

Deploying the CMU was an offensive not a defensive strategy. It was a show of force. It was designed to clear occupiers or protesters from a particular area. Using the CMU was a calculated risk that was within Inspector Carson’s authority to make but, as I have pointed out, the information upon which Inspector Carson made the decision was wrong. If Inspector Carson had the correct information, I believe he would not have made a decision to deploy the CMU.

Before deploying the CMU, Inspector Carson should have waited until he received Constable Poole’s report with respect to the Gerald George incident.

He should have waited until the TRU Sierra teams were in position and reported back to him on what was happening in the sandy parking lot and the kiosk. He would have learned that there was not a fire in the sandy parking lot. He would have learned how many people, if any, were in the sandy parking lot and whether they had any weapons. He would have had better information upon which to make his decision. One of the problems that he had was that there was not an appropriate intelligence system in place to verify the information about guns that had been provided to him.

The decision to deploy the CMU and TRU as a show of force was not in keeping with the peaceful approach called for in Project Maple and did not adequately contemplate the characteristics of an Aboriginal protest. This level of response to a perceived escalation of activity increased the potential for violence. Given the heightened tension created by this situation, one could have, and in my view should have, contemplated that any unexpected occurrence — such as Cecil Bernard George walking out of the park turnstile into the sandy parking lot — might set off a confrontation. This is exactly what happened.

The OPP Incident Commander should have realized that sending a large number of officers in darkness, with helmets, shields, and guns to confront the First Nations occupiers could have easily erupted and resulted in a confrontation between the officers and the occupiers. Inspector Carson was familiar with the Aboriginal community and did not believe the occupiers would use violence against the OPP. Except for isolated incidents involving the military, the occupiers had not resorted to violence. And until September 4 and 5, the occupiers had not used violence against the OPP. In making the decision to deploy the CMU, Inspector Carson relied too heavily on information that was inaccurate and unverified. He also misjudged and did not anticipate the reaction of the occupiers to the excessive force used to arrest Cecil Bernard George.

This was the first time that the CMU and TRU had been deployed together in this manner to address an Aboriginal occupation; in my view, the OPP officers had insufficient experience with this approach. The OPP had little and sometimes conflicting information about what they were about to confront. Acting Sergeant Deane and Inspector Carson are not the only ones who need to take some responsibility for what occurred. Notwithstanding the many progressive reforms undertaken by the OPP in recent years in relation to policing Aboriginal occupations, I believe the OPP, as an institution, also needs to be accountable and take some responsibility for the tragedy that resulted on September 6, 1995.

POLICY ANALYSIS, VOLUME 2 — EXECUTIVE SUMMARY

Volume 2, *Policy Analysis*, contains my “recommendations directed to the avoidance of violence in similar circumstances.”

Aboriginal protests and occupations occur throughout the province, often with little warning, and no one can predict where they will occur. The fundamental conditions and catalysts that spark such protests continue to exist in Ontario, more than a decade after Ipperwash. However, my analysis has convinced me that Aboriginal occupations and protests are not inevitable, nor are they inevitably violent.

The provincial government and other institutions must redouble their efforts to build successful, peaceful relations with Aboriginal peoples in Ontario so that we can all live together peacefully and productively. There have been significant, constructive changes in the law and to key public institutions in the twelve years since Ipperwash. Yet more is needed. We must move beyond conflict resolution by crisis management. And we cannot be passive; inaction will only increase the considerable tensions that already exist between Aboriginal and non-Aboriginal citizens in this province.

The immediate catalyst for most major occupations and protests is a dispute over a land claim, a burial site, resource development, or harvesting, hunting, and fishing rights. The fundamental conflict, however, is usually about land. Contemporary Aboriginal occupations and protests should therefore be seen as part of the centuries-old tension between Aboriginal peoples and non-Aboriginal peoples over the control, use, and ownership of land. The frequency of occupations and protests in Ontario and Canada is a symptom, if not the result, of our collective and continuing inability to resolve these tensions consistently.

Aboriginal occupations and protests are much more common than most non-Aboriginal Ontarians likely realize. Most people in the province have probably heard of Ipperwash, Oka, and Caledonia. A smaller number of people may have heard of Burnt Church or Gustafsen Lake. It is fair to conclude, however, that only Aboriginal peoples are likely to truly appreciate how prevalent Aboriginal occupations and protests are in this province and in Canada.

The immediate cost of conducting relations with Aboriginal peoples through confrontations and over the barricades is very high. All Ontarians risk even more if we leave long-simmering disputes with Aboriginal peoples

unsettled until they boil over. Without effective and respectful means of resolving these disputes, an atmosphere of insecurity and uncertainty with respect to the lands at issue will persist. All Ontarians will continue to suffer lost opportunities to work cooperatively with Aboriginal peoples in the care and development of natural resources. And, perhaps most seriously, we will fail to build and maintain a trusting relationship with Aboriginal peoples in which all can take pride and from which all Ontarians can benefit.

Volume 2, *Policy Analysis*, begins with a brief history and analysis of Aboriginal occupations and protests. Thereafter, it is organized thematically into three broad policy areas: treaty and Aboriginal rights, policing and Aboriginal peoples, and police/government relations. The treaty and Aboriginal rights section includes chapters on settling land claims, natural resources, Aboriginal burial sites, education about Aboriginal peoples, and institutional arrangements to support the reforms I have recommended. The policing and Aboriginal peoples chapters examine the policing of Aboriginal protests, First Nations policing, and bias-free policing. The section on police/government relations analyzes this issue in detail, with particular emphasis on police/government relations during a critical incident involving Aboriginal people.

The remainder of this executive summary provides a brief synopsis of the substantive areas of the report.

TREATY RELATIONS IN ONTARIO

Occupations of land and blockades of transportation facilities by Aboriginal people occur when members of an Aboriginal community believe that governments are not respecting their treaty or Aboriginal rights, and that effective redress through political or legal means is not available. The events that led to the death of Dudley George arose from a long-standing dispute about treaty and Aboriginal rights.

Building a better relationship with Aboriginal peoples requires that governments and citizens recognize that treaties with Aboriginal peoples are the foundation that allowed non-Aboriginal people to settle in Ontario and enjoy its bounty. Nearly all of the lands and inland waters in Ontario are subject to treaties between First Nations and the British and Canadian governments. These treaties are not, as some people believe, relics of the distant past. They are living agreements, and the understandings on which they are based continue to have the full force of law in Canada today.

The treaty process held out the promise of a relationship based on mutual respect and common interests. However, once the settler population came to outnumber the Aboriginal population, and the Indian nations were no longer needed as military allies to defend the colony, respect for the treaties on the non-Aboriginal side gave way to policies of domination and assimilation. For over a century, governments (both federal and provincial) either ignored treaty obligations or interpreted them to reflect their own interests while the Aboriginal signatories did not have access to political or legal means of addressing treaty claims.

The experience of the Chippewas of Kettle and Stony Point First Nation illustrates the frustration and anger that can result from the failure of federal and provincial governments to take treaty obligations seriously. It also illustrates how failure to educate Ontario citizens on the treaty relationships that lie at the foundation of their province can contribute to misunderstanding and conflict. One of the lessons of Ipperwash is the realization that all of us in Ontario, Aboriginal and non-Aboriginal, are treaty people.

There are three areas where reform in Aboriginal relations is most needed in order to prevent the kind of incident that occurred at Ipperwash. The first area is disputes over treaty rights with respect to lands and waters. The second area is the regulation and development of natural resources on Aboriginal traditional lands and waters. The third area is the protection of and respect for Aboriginal heritage, burial sites, and other sacred sites.

SETTLING LAND CLAIMS

The single biggest source of frustration, distrust, and ill-feeling among Aboriginal people in Ontario is our failure to deal in a just and expeditious way with breaches of treaty and other legal obligations to First Nations. If the governments of Ontario and Canada want to avoid future confrontations like Ipperwash or Caledonia, they will have to deal with land and treaty claims effectively and fairly.

The term “land claims” is the source of considerable misunderstanding among members of the public. It seems to suggest to many people that First Nations are asking governments to give them more land, but that is not the case. These claims ask governments to fulfill the promises they made to First Nations about land and resources in the past and to compensate them for their failure to do so.

Because legal issues are at the heart of land claims, First Nations could litigate them in the courts. But litigation is expensive and adversarial. Moreover, the courts are usually not capable of settling the dispute fully. Perhaps most importantly, judicial decisions cannot establish the positive ongoing relationship between First Nations, governments, and neighbouring communities that is needed for working out consensual approaches to practical matters that go beyond purely legal issues. It is for these reasons that alternatives to litigation were introduced which aim at reaching negotiated settlements. Unfortunately, the land and treaty claims processes developed and applied by the federal and provincial governments since the mid-1970s have been largely ineffective, painfully slow, and unfair. They also lack accountability and transparency.

Fixing the flaws in the claims settlement process is complicated by two levels of jurisdiction, federal and provincial. A few claims in Ontario may involve only the federal government, but most claims involve both levels of government. This means that any reforms introduced by Ontario will be incomplete and inadequate unless appropriate complementary reforms take place at the federal level.

In my view, the efficiency, effectiveness, and fairness of the land claims process in Ontario could be significantly improved by establishing a Treaty Commission of Ontario (TCO). The TCO would not negotiate land claims or decide the meaning of treaties. Rather, it would have a strategic mandate to assist the governments of Ontario, Canada, and First Nations to negotiate settlements of land claims independently and impartially. The TCO's independence and permanence would be achieved by establishing it in a provincial statute as an independent agency reporting directly to the Legislative Assembly of Ontario. In this respect, it would be similar to another important independent oversight body, the Environmental Commissioner of Ontario. The TCO would have to be funded appropriately to ensure its success.

Establishing the TCO is my key recommendation for improving the land claims process in Ontario. However, the TCO alone will not be able to achieve significant progress on land claims without other initiatives at the provincial and federal levels, including reforms to the eligibility criteria for the Ontario land claims process, protection of non-Aboriginal interests, and improved funding for the land claims process generally.

Federal/provincial cooperation will be crucial to the sustained effectiveness of the TCO. Both governments must commit to its success through funding and through political and administrative support. Federal/provincial

cooperation on the TCO should be complemented by other federal/provincial initiatives to improve the efficiency, effectiveness, and fairness of the land claims process in Ontario in the areas of claims registration, dispute resolution, legal liabilities, and common benchmarks/policies.

The provincial government should make every reasonable effort to establish the TCO and to address the other issues I have identified in this report with the full cooperation of the federal government. If that is not possible, however, the provincial government should proceed to establish the TCO and address other issues on its own with the full participation and cooperation of First Nations in Ontario.

NATURAL RESOURCES

Disputes over natural resource development between Aboriginal peoples, governments, and third parties have led to many Aboriginal occupations and protests. Indeed, some of the longest and most well-known occupations and protests have been about natural resources, including the protests at Burnt Church, Temagami, Grassy Narrows, and the “War in the Woods” in British Columbia. The recent incident involving Kitchenuhmaykoosib First Nation at Big Trout Lake in Northern Ontario is an example of the growing tension over natural resources in that region.

The regulation of natural resources is an area in which Aboriginal rights, non-Aboriginal economic interests, and court intervention can collide in a combustible mix before, during, or after an Aboriginal occupation or protest.

Conflicts over natural resources often stem from sharply different understandings about the nature of the lands which Aboriginal peoples agreed to share with newcomers (as opposed to those which they retained as reserves for their exclusive use and occupation). First Nations people regarded and continue to regard the lands they agreed to share as their “traditional lands.” The resources on those lands had for many years provided their sustenance. Although they agreed to give up their exclusive Aboriginal title to these lands in making treaties with the Crown, they never intended to abandon them. They continue to regard these lands as a major source of their sustenance and as fundamental to their identity.

A number of Supreme Court of Canada decisions have clarified the meaning of the Aboriginal and treaty rights recognized and affirmed in the Constitution of Canada. In three recent cases, the Court dealt with the principle

of the “honour of the Crown” and the duty of the government to consult Aboriginal peoples and accommodate their interests when contemplating any action that might have an impact on Aboriginal or treaty rights. Federal, provincial, and local governments now have a duty to consult, not only in situations where the treaty or Aboriginal right is proven, but also in cases where the right is asserted but not yet proven.

The duty to consult and accommodate is extremely important. It offers the real prospect of reconciling Aboriginal rights and interests in land, water, and resources through peaceful, meaningful consultation with Aboriginal peoples and through their participation in decision-making. If properly and effectively fulfilled, the duty to consult and accommodate thus offers the very real potential to significantly reduce the number of Aboriginal occupations and protests.

In my view, developing a provincial policy on the duty to consult and accommodate would be a good place to start to fulfil the obligation. Ultimately, it would be advisable to incorporate an acknowledgment of the duty to consult and accommodate in legislation, regulations, and other applicable government policies. First Nation and Métis organizations should be fully involved in developing these policies.

In addition to this initiative, the provincial government should continue to work with Aboriginal organizations in Ontario to develop co-management arrangements and resource-sharing initiatives and should provide financial or other support to Aboriginal organizations and third parties to develop capacity, identify best practices, and formulate strategies to promote co-management and resource sharing.

The Ministry of Natural Resources and First Nations should work together to on a number of additional initiatives, including update and improve the Interim Enforcement Policy.

ABORIGINAL BURIAL AND HERITAGE SITES

Burial practices touch the fundamental personal, cultural, religious, and philosophical ideas and beliefs of both Aboriginal and non-Aboriginal peoples.

Aboriginal heritage and burial sites become flashpoints for an occupation or protest when Aboriginal peoples believe that they must act to protect a site from desecration. This often happens when a public or private landowner or developer refuses to acknowledge an Aboriginal burial place or heritage

site or refuses to consult with Aboriginal peoples about the disposition of the site. The Oka standoff in 1990 is the most widely known confrontation about an Aboriginal burial site.

Fortunately, throughout much of the province, there has been a marked reduction in the rate at which archeological sites are being destroyed. However, the potential for loss in the future remains great because of continued growth and development, particularly in Southern Ontario.

The provincial government has made important progress in incorporating Aboriginal values and protecting Aboriginal burial and heritage sites. Nevertheless, I believe that Aboriginal burial and heritage sites on Crown lands can and should be protected still more effectively.

The laws and policies governing Aboriginal burial and heritage sites should acknowledge the uniqueness of these sites, ensure that First Nations are aware of decisions affecting them, and promote First Nation participation in decision-making about them. Meaningful, constructive participation necessarily depends on accountability and transparency in the decision-making process.

EDUCATION ABOUT ABORIGINAL PEOPLES

Education is fundamental to improving relations between Aboriginal and non-Aboriginal peoples. At the very least, every Ontarian should understand that this province and our country were built upon the treaties negotiated with our First Nations, and that everyone shares the benefits and obligations of those treaties. Every Ontarian should also realize that treaties are not historical artefacts from some distant time. They remain vitally important and relevant today.

My recommendations in this area are primarily directed to ensuring that the provincial government and the Treaty Commission of Ontario work with First Nations organizations and educators to develop a comprehensive plan to promote general public education about treaties in Ontario. This should include developing educational materials and strategies that emphasize the local or regional character of treaty relationships.

PROVINCIAL LEADERSHIP AND CAPACITY

The complexity and importance of Aboriginal issues has outgrown the institutional arrangements dedicated to them within the provincial government. I have concluded, therefore, that the provincial government should create a

Ministry of Aboriginal Affairs, with a clear mandate and authority, with its own minister (with a seat at the Cabinet table) and deputy minister, and its own budget.

Creating this ministry would go a long way toward ensuring that Aboriginal issues receive the priority and focus they deserve, and it would also herald a commitment by the province to a new, constructive relationship with Aboriginal peoples.

The current program portfolio at the Ontario Secretariat for Aboriginal Affairs (OSAA) should be the starting point for the new ministry. However, the mandate of the new ministry should extend beyond that to include support for the Treaty Commission of Ontario, the establishment of a permanent structure for obtaining regular input from the Aboriginal community, and other initiatives. Expectations for the new ministry, inside and outside government, should be reasonable, however, and the objectives must be attainable and clearly understood by everyone.

First Nations and Aboriginal peoples in Ontario will need resources and skills to participate effectively in the new processes and institutions recommended in this report. Therefore, I recommend that the provincial government establish and fund an Ontario Aboriginal Reconciliation Fund, modeled on the First Nations New Relationship Trust Fund in British Columbia. The provincial government, (through the Ministry of Aboriginal Affairs if it is established) should work with First Nations and Aboriginal organizations to determine the mandate, governance structure, funding guidelines, and administrative structure of the fund.

POLICING ABORIGINAL OCCUPATIONS

How Aboriginal occupations and protests are policed is important to Aboriginal protesters, Aboriginal communities, and the police, but the issue affects all Ontarians. The right to peaceful assembly is fundamental to Canadian democracy and is enshrined in section 2 of the *Charter of Rights and Freedoms*. To ensure the personal safety of all citizens in the course of a protest, the police must exercise restraint and use force only as a last resort. Incidents of violence inflame police/Aboriginal relations and make the resolution of important legal, social, and economic issues considerably more difficult. Thus, we all have an interest in avoiding violence and promoting peaceful resolution of disputes involving Aboriginal peoples.

The objectives of police services and police leaders during Aboriginal protests and occupations should be to minimize the risk of violence, to facilitate the exercise of constitutionally protected rights, including treaty and Aboriginal rights and the right to peaceful assembly, to preserve and restore public order, to remain neutral as to the underlying grievance, and, if possible, to facilitate the building of trusting relationships that will assist the parties in resolving the dispute constructively.

Organizationally, police services should devote time and resources to building capacity to respond to Aboriginal protests and occupations. This means ensuring that the police service has designated leadership and officers who are trained in Aboriginal history, law, and customs. It also means that an integrated, peacekeeping approach to the police response to Aboriginal occupations and protests should include Aboriginal and non-Aboriginal officers, the OPP, and First Nation police services.

Police strategy for Aboriginal occupations and protests should emphasize the development of communication networks and trusting relationships with Aboriginal peoples before, during, and after protests. This approach necessarily involves ongoing communication, collaboration, and partnerships with First Nations and Aboriginal leaders and communities.

Aboriginal protests and occupations may also require intervention by the federal and provincial governments. This is because Aboriginal protests and occupations very often raise public policy and legal issues that are well beyond the scope of the public order policing and authority of police services. Governments should not avoid their constitutional obligations to First Nations and Aboriginal peoples under the cloak of keeping out of police “operational matters.”

There have been considerable changes in the policing of Aboriginal occupations and protests and in the relationship between Aboriginal peoples and the police in the last twelve years, and I have taken these developments into account.

The OPP’s participation in Part 2 of the Inquiry highlighted the diversity and depth of OPP programs and policies designed to promote relationship-building with Aboriginal communities. The OPP’s “Framework for Police Preparedness for Aboriginal Critical Incidents” is one element of a comprehensive OPP strategy to improve the policing of Aboriginal occupations and protests.

The Framework sets out a broad policy structure for policing a wide range of Aboriginal critical incidents. It is an operational policy, intended to guide incident commanders and officers before, during, and after such incidents. The OPP has been applying the Framework at Caledonia.

I consider the Framework and related programs to be best practices. The OPP should maintain the Framework and related initiatives as high priorities within the organization and devote a commensurate level of resources and executive support to them. The provincial government should commit sufficient resources to the OPP to support these initiatives.

Nevertheless, the OPP should take a number of steps to test or improve the effectiveness of the Framework and related programs. In my view, independent evaluation is the obvious next step. The Framework and the OPP's Aboriginal Relations Teams program should be subject to independent, third-party evaluations. These evaluations should include significant and meaningful participation by First Nation representatives in the design, oversight, and analysis.

The OPP should also improve its consultation and outreach activities by establishing a formal consultation committee with major Aboriginal political organizations in Ontario, developing a consultation and liaison policy for non-Aboriginal communities, and developing a strategy to restore relationships with both Aboriginal and non-Aboriginal communities after an Aboriginal occupation or protest.

The responsibility for promoting a peacekeeping approach does not rest with the OPP alone. The provincial government should develop a policy to govern its own response to Aboriginal occupations and protests. This policy should publicly confirm its commitment to peacekeeping and should promote consistency and coordination between the provincial government, the OPP, and other police services. This would ensure that any police service in Ontario charged with policing an Aboriginal occupation or protest would be required to acknowledge and respect current best practices. It would also codify the lessons learned at Ipperwash. Such a policy would reassure Aboriginal and non-Aboriginal Ontarians that peacekeeping is the goal of both police and government in this province, that treaty and Aboriginal rights will be respected, that negotiations will be attempted at every reasonable opportunity, and that the police will use force only as a last resort.

The provincial government should also develop policies governing negotiations with protesters during Aboriginal occupations or protests and policies on seeking injunctions. The province should also work with the federal government, local governments, and First Nation governments to advance public education about significant Aboriginal protests and to provide information to the communities affected.

Finally, through new or renewed protocol arrangements, the provincial government, First Nations, the OPP, and other police services in Ontario should develop networks to promote communication, understanding, trust, and collaboration during Aboriginal occupations and protests.

FIRST NATION POLICING

First Nation police services often support the OPP during occupations and protests occurring within the OPP's jurisdiction. First Nation police services are also often called upon to police occupations and protests within their own communities. They also play an important role in preventing occupations and protests in the first place by acting to diffuse tensions before they escalate into a protest.

First Nation police services in Ontario are both valuable and successful. They make important contributions to public safety, promote culturally appropriate policing, and help to build respectful relationships between police and Aboriginal peoples across the province. If they are supported and sustained appropriately, they may be even more effective in the future.

The provincial government, the OPP, and First Nation police services should work together to identify how the provincial government could support First Nation police services so that they can be as effective as possible when policing Aboriginal occupations and protests, either within their own communities or in support of the OPP or other police services in Ontario.

Finally, the federal and provincial governments and First Nation governments should jointly commit to renewing First Nation police services in Ontario. Together, they should consolidate the gains made so far and move to place First Nation police services on much firmer financial, operational, and legal ground. To do so, the federal and provincial governments would have to commit to working with First Nations to develop a secure legislative basis for First Nation police services in Ontario and to improving the capital and operating funding for those services.

BIAS-FREE POLICING

The attitudes of the police and Aboriginal peoples toward each other can be a major factor in whether a protest will be peaceful or violent. Problems are

bound to occur when the people facing each other across a barricade see stereotypes instead of individuals.

The OPP acknowledged that the shooting death of Dudley George left a tragic mark on the relationship between the OPP and the Aboriginal community. Yet the tragedy was also a catalyst for significant, constructive changes within the OPP and in its relationship with Aboriginal peoples.

The police/Aboriginal relations initiatives of the OPP are impressive in their breadth and depth. These programs represent a comprehensive strategy to improve relationships between the OPP and Aboriginal peoples, especially when combined with the OPP initiatives regarding policing occupations and First Nation policing. For the most part, I believe that the OPP police/Aboriginal relations initiatives conform to the best practices identified in previous inquiries and reports. The OPP should maintain these initiatives and accord them a high priority within the organization.

As in the case of the Framework and the Aboriginal Relations Teams programs, the next step for the OPP should be to develop a comprehensive evaluation strategy for all of its significant police/Aboriginal relations initiatives, including an independent, third-party evaluation of its Native Awareness Training and recruitment initiatives. The evaluation program should include a comprehensive data collection effort. The OPP should develop this strategy in partnership with Aboriginal organizations in Ontario.

For their part, the provincial government and the Ministry of Community Safety and Correctional Services should develop a new and forward-looking provincial strategy to improve police/Aboriginal relations in Ontario. This would involve initiatives to support the OPP in its related efforts and initiatives to develop province-wide skills, best practices, capacities, and resources consistent with the best traditions of equitable, transparent, accountable, and democratic policing. The provincial government would thus demonstrate that it expects Aboriginal communities to be policed with respect and at the same standard as applied to non-Aboriginal communities. This policy should be designed with the participation of Aboriginal organizations in Ontario.

Finally, there is the issue of incidents involving racist or culturally insensitive behaviour by police officers. The provincial government is in the process of establishing a new police complaints system in Ontario through Bill 103, the *Independent Police Review Act, 2006*. The new system will significantly

improve the way in which complaints or incidents of racist or culturally insensitive behaviour by police officers are addressed in Ontario

The complaints system could be further improved by requiring that complaints directed at a police service, that allege racism and other culturally insensitive behaviour, be handled by the new Independent Police Review Director. The Independent Police Review Director should then determine the most appropriate policy to be followed by his or her office and by the police service, including the role, if any, for informal discipline. These modifications would improve transparency and accountability in dealing with these matters.

The Ministry of Community Safety and Correctional Services should also issue a directive to all police services in Ontario, including the OPP, requiring police officers to report any incidents of racism or other culturally insensitive behaviour by other officers to their supervisors. This would ensure that such behaviour is addressed, even when there is no external complainant.

POLICE/GOVERNMENT RELATIONS

The Ipperwash Inquiry was the fifth major Canadian public inquiry in the last twenty-five years to consider police/government relations in detail.

Unlike the case in many other issues considered in this Inquiry, there has been little advancement or reform in the last twelve years in the legal and policy rules governing this fundamental constitutional relationship. It is no doubt true that government and police policy-makers have learned many lessons from Ipperwash. I suspect, for example, that police and government policy-makers involved at Caledonia are more acutely aware of the importance of avoiding or reducing both the perception and fact of political interference in police operational decision-making because of their collective desire to avoid “another Ipperwash”.

I have concluded that the concept or doctrine of police independence needs to be modernized in light of an evolving understanding of how police and governments can and should work together in a modern democracy. The increasing complexity of policing (and government, for that matter) means that the apparently simple and understandable dichotomies between police/government and policy/operations are no longer, by themselves, sufficient to guide policy-makers and decision-making on both sides of the issue. In my view,

police and government decision-making will always intersect and policy and operations will always be fluid concepts, subject to reasonable interpretation and reinterpretation depending on the context. This is particularly true in the case of Aboriginal occupations and protests, where lines between policy and operations are often blurred.

I believe that it is possible and desirable to adopt reforms that will significantly reduce the perception and fact of inappropriate government interference. Clearer rules will also promote accountability, transparency, and public confidence in key democratic institutions and leaders. Clearer rules are also likely to increase public safety and improve police and government decision-making during potentially volatile public order incidents.

Care must be taken to ensure transparency and clarity in these matters so that police and governments can both be called to account for difficult and controversial decisions, irrespective of how we strike the balance between police and government. When something goes wrong, as it tragically did at Ipperwash, the public has a right to know who made the key decisions and why. In an ideal world, proceedings such as this Inquiry would not be necessary.

Any attempt to modernize police/government relations must begin with a reconsideration of the term “police independence.” Simply put, the term “police independence” is misleading. The word “independence” suggests that the boundaries between police “independence” and government “authority” can be clearly articulated and understood. This is not always possible or advisable.

The term “police operational responsibility” is generally a better way to conceptualize and describe our contemporary understanding of what is often referred to as “police independence.” The term “police independence,” to the extent that it is descriptive at all, should not apply beyond the core of independent police decision-making in the exercise of law enforcement powers in individual cases.

“Police operational responsibility” must be matched and balanced with the complementary concept of “ministerial policy responsibility”. “Ministerial policy responsibility” recognizes and emphasizes that an elected government minister bears ultimate responsibility for the policies pursued by the police.

I believe that the implementation of my recommendations in this area will result in a clearer, more modern, and ultimately more democratic framework to govern police/government relations in Ontario. These measures envis-

age a principled, flexible, transparent, and accountable system in which police and government can exercise their respective responsibilities, even in a fast-paced crisis.

The first major component of a new policing framework is to clarify, through legislation, the roles and responsibilities of the OPP, the provincial government minister responsible for policing (the Minister of Community Safety and Correctional Services, formerly the Solicitor General), and other members of the provincial government in policy and operational decision-making.

The second component is to revitalize ministerial directives. This would recognize that it is both impossible and undesirable to have static policing policies. Successive ministers and governments will inevitably adopt different policing policies. However, all governmental policy-making with respect to policing should be founded in transparency and accountability through the use of publicly disclosed ministerial directives. This requires reforms to the manner in which ministerial directives are issued, circulated, and withdrawn.

The third component of this framework is to formulate rules and processes to manage the exchange of information between police and government, particularly in a fast-paced crisis. Important democratic and public safety considerations justify the exchange of information between the police and government, but when such exchanges are necessary, care must be taken to ensure that they do not become covert or veiled attempts to inappropriately direct police operations.

Finally, all senior officials within the Ministry of Community Safety and Correctional Services and the OPP should be briefed or trained on these policies and the OPP should establish policies and procedures to insulate operational decision-makers, incident commanders, and front-line officers from inappropriate government direction or advice.

INVESTIGATION & FINDINGS

1. The provincial government should invite the federal government to participate in interministerial “blockade” committees to inform and coordinate governmental responses to Aboriginal occupations and protests when a potential federal interest is engaged.
2. Police planning for responding to an Aboriginal occupation or protest should include:
 - a. a communication strategy for important messages that ought to be conveyed to the occupiers;
 - b. the technical aspects of how the police would communicate with the occupiers; and
 - c. specified people outside the police service who could effectively communicate with the occupiers.
3. Police services should ensure:
 - a. that the intelligence unit of the police service is engaged and operating and has adequate resources and procedures for collection, collation and evaluation of information;
 - b. that reports are reduced to writing in a timely manner whether initially transmitted verbally or not;
 - c. that intelligence data is subject to analysis and reliability assessment;
 - d. that there is a single repository through which intelligence data flows to the Incident Commander;
 - e. that the leader of the intelligence unit or his or her designate reports directly to the Incident Commander; and
 - f. that the Incident Commanders and other senior personnel receive training in intelligence.
4. All telephone calls to and from the command post should be recorded and

minutes should be kept of all meetings of the Incident Commander. Incident Commanders should continue to be accountable for the keeping of accurate, detailed notes at the time of events.

5. The Ontario Secretariat for Aboriginal Affairs, in consultation with Aboriginal organizations, should compile a list of available negotiators and facilitators who could assist the government to quickly and peacefully resolve Aboriginal issues that emerge.
6. Incident Commanders must exercise discretion as to what political information is shared with his or her senior officers and be alert to the perception of political influence when exercising his or her discretion. There should be a buffer between the Incident Commander and politicians whether from the federal, provincial or local orders of government.
7. The Province of Ontario should enact a regulation pursuant to the *Police Services Act* requiring officers to file a use of force report when they point a long gun or rifle, regardless of whether a shot is fired.
8. The Ministry of Community Safety and Correctional Services and the OPP should develop written protocols that clearly delineate the appropriate functions of police officers seconded to provincial ministries. In addition, politicians and civil servants should be briefed on the appropriate role of seconded officers.
9. Public order policing strategies should ensure that they address the uniqueness of Aboriginal occupations and protests, with particular emphasis on the historical, legal and behavioural differences of such incidents. Training should focus on the requirements for peacekeeping, communication, negotiation and building trust before, during and after such incidents.
10. The OPP should take measures to ensure that communications between officers regarding tactical decisions and intelligence remain secure and not subject to interception by others.
11. The OPP should ensure the involvement of First Nation police services and the assistance of First Nation mediators when it responds to Aboriginal occupations and protests.
12. The OPP should ensure that the names and badge numbers of officers at public order events should continue to be inscribed visibly and prominently on outer clothing or helmets.

13. The OPP should ensure that when the Public Order Unit (“POU”) is deployed, the incident commander is located with the POU at the site and not in the command post.
14. Police should ensure that known or available information about the circumstances of the injury and the medical history of the patient is conveyed to medical personnel and hospital staff who transport and/or treat the patient.
15. Crisis counselling services should be made available and accessible to individuals who are involved in violent or traumatic events involving police action. The responsibility for provision of the crisis counselling should rest with the provincial government in relation to police conduct that occurs off reserve land, and with the federal government concerning police conduct which occurs on reserve land. The type of services offered should be responsive to the type of treatment required, and informed by the cultural and traditional practices and beliefs of the Aboriginal persons requiring the counselling and support.
16. The OPP should issue a public apology to Cecil Bernard George for the use of excessive force in the form of blows to his head and face at the hands of one or more unidentified police officers during the course of his detainment and arrest in the sandy parking lot during the evening of September 6th, 1995, leading to injuries which required medical treatment. The apology should be delivered in person by the current Commissioner, or his delegate, and via a press release and conference.
17. Regulations to the *Police Services Act* should be amended to implement improved measures to ensure compliance with the mandatory use of force reporting requirement by requiring witness police officers to file a similar report whenever they witness the use of force requiring medical treatment by police officers on civilians, with corresponding disciplinary repercussions for failure to do so.
18. Subject to recommendation 68, whenever there are allegations of racism (including a failure by other officers to report), they should be dealt with by way of formal discipline, with all the protections and safeguards accorded by the discipline process.
19. The federal government should immediately return the former army camp to the peoples of the Kettle and Stony Point First Nation and guarantee that it will assume complete responsibility for an appropriate environmental clean up of the site.

20. The federal government should issue a public apology with appropriate compensation to the Kettle and Stony Point First Nation for the failure of the federal government for more than 60 years to honour its promise to return the lands to the First Nation.

POLICY ANALYSIS

1. The provincial government should establish a permanent, independent, and impartial agency to facilitate and oversee the settling of land and treaty claims in Ontario. The agency should be called the Treaty Commission of Ontario.
2. The Treaty Commission of Ontario should be established in a provincial statute as an independent agency reporting directly to the Legislative Assembly of Ontario. The Treaty Commission of Ontario should have permanent administrative, legal, and research staff and should be fully independent from the governments of Canada, Ontario, and First Nations. The statute should specify that the purpose of the Treaty Commission of Ontario is to assist Ontario in discharging its treaty responsibilities.
3. The provincial government should make every reasonable effort to establish the Treaty Commission of Ontario with the full cooperation of the federal government. If that is not possible, the provincial government should establish the Treaty Commission of Ontario on its own in cooperation with First Nations in Ontario.
4. The governments of Ontario, Canada, and First Nations should jointly select the head of the Treaty Commission of Ontario—the Treaty Commissioner of Ontario. The selection process should be set out in the statute following discussions among the parties. The Treaty Commissioner should serve for a fixed but renewable term and should be removed only upon agreement by First Nations and the Legislative Assembly of Ontario.
5. The Treaty Commission of Ontario should be inaugurated in a prominent and ceremonial way. The ceremony should recall the 1764 Treaty of Niagara and renew its promises of mutual support and respect.
6. The Treaty Commission of Ontario should be given a four-part, strategic mandate:
 - a. The TCO should be given the authority to assist governments and First Nations, independently and impartially, in developing and applying a wide range of tools and processes to clarify and settle issues in an expeditious and cooperative way. In furtherance of this mandate, the

TCO should be given the authority to prioritize, consolidate, or batch claims, in whole or in part, to encourage joint fact-finding and historical research, to identify and find consensual ways of dealing with issues common to claims associated with a particular treaty or region, and to promote interest-based settlements.

- b. The TCO should be given the mandate to improve the efficiency and cost-effectiveness of the land claims process in Ontario. The TCO should be given the authority to work with parties to establish and publish benchmarks for processing claims and to require parties to use various forms of dispute resolution, binding as well as non-binding, when the benchmarks are not met.
 - c. The TCO should be given the mandate to make the claims process accountable and transparent to all Ontarians.
 - d. The TCO should be given a broad mandate to undertake public education about treaties, treaty relationships, and land claims in Ontario. The TCO should be given the specific authority to develop programs about treaty history designed to be part of the Ontario school curriculum.
7. The provincial and federal governments should commit sufficient resources to the TCO to enable it to achieve its objectives.
 8. Access to the Ontario land claims process should depend entirely on whether the documentation filed by the First Nation provides *prime facie* evidence that there has been a breach of the legal obligations of the Crown.
 9. The provincial government should improve public education about its land claim policies.
 10. The provincial government should commit sufficient funds to enable the Ontario land claims process to resolve claims within an acceptable period. This includes funding for First Nations to participate in the land claims process and for compensation for breaches of legal obligations by the Crown.
 11. The provincial government and the TCO should work together to develop a business and financial plan for the Ontario land claims process. The objective would be to estimate the resources needed to resolve claims and to meet reasonable benchmarks during the land claims process.
 12. The federal government should cooperate fully with the provincial government and First Nations in Ontario to establish the Treaty Commission of Ontario and promote its effectiveness.

13. The federal and provincial governments should work with the TCO and any equivalent federal agency to improve the efficiency, effectiveness, and fairness of the federal and provincial land claims processes. Together, they should undertake to do the following:
 - a. establish a common registry for federal and Ontario land claims.
 - b. establish a dispute resolution process that includes access to non-binding and binding resolution.
 - c. use binding arbitration to determine the legal liabilities of the federal and provincial governments.
 - d. develop common or consistent benchmarks and policies for federal and Ontario land claims.

The provincial government should make every reasonable effort to seek the federal government's cooperation on these issues. If that cooperation is not possible, the provincial government should proceed to address these issues on its own in cooperation with First Nations in Ontario.

14. The provincial government should work with First Nations and Métis organizations to develop policies regarding how the government can meet its duty to consult and accommodate. The duty to consult and accommodate should eventually be incorporated into provincial legislation, regulations, and other relevant government policies as appropriate.
15. The provincial government should promote respect and understanding of the duty to consult and accommodate within relevant provincial agencies and Ontario municipalities.
16. The provincial government should continue to work with Aboriginal organizations in Ontario to develop co-management arrangements and resource-sharing initiatives. The provincial government should also provide financial or other support to Aboriginal organizations and third parties to develop capacity, identify best practices, and formulate strategies to promote co-management and resource-sharing.
17. The provincial government should commission an independent evaluation of one or more significant co-management initiatives. This evaluation should be undertaken with the cooperation and participation of Aboriginal organizations.

18. The Ministry of Natural Resources and First Nations should work together to update and improve the Interim Enforcement Policy. This process should include discussions on how to evaluate and monitor the implementation of the policy and on how to improve the transparency and accountability of MNR enforcement activities.
19. The Ministry of Natural Resources and other provincial ministries whose activities in the regulation of natural resources affect Aboriginal and treaty rights should develop and circulate a Statement of Aboriginal Values which addresses their relations with Aboriginal peoples.
20. The Ministry of Natural Resources should establish a public complaints process.
21. The provincial government should develop and circulate a policy outlining how it will notify and consult with interested third parties on natural resource initiatives involving Aboriginal peoples.
22. The provincial government should work with First Nations and Aboriginal organizations to develop policies that acknowledge the uniqueness of Aboriginal burial and heritage sites, ensure that First Nations are aware of decisions affecting Aboriginal burial and heritage sites, and promote First Nations participation in decision-making. These rules and policies should eventually be incorporated into provincial legislation, regulations, and other government policies as appropriate.
23. The provincial government should ensure that the *Funeral, Burial and Cremation Services Act, 2002* includes the same appeal process for all types of cemeteries and burials and an obligation to consider Aboriginal values if a burial site is determined to be Aboriginal.
24. The provincial government, in consultation with First Nations and Aboriginal organizations, should clarify the meaning of “Aboriginal values” in all Class EA documents and other guidelines and policies applicable to public lands.
25. The provincial government, in consultation with First Nations and Aboriginal organizations, should determine the most effective means of advising First Nations and Aboriginal peoples of plans to excavate Aboriginal burial or heritage sites.
26. The provincial government should encourage municipalities to develop and use archaeological master plans across the province.

27. The provincial government should prepare plain language public education materials regarding Aboriginal burial and heritage sites.
28. The provincial government should work with First Nations and Aboriginal organizations to develop an Aboriginal burial and heritage site advisory committee.
29. The provincial government and Treaty Commission of Ontario should work with First Nations organizations and educators to develop a comprehensive plan to promote general public education about treaties in Ontario. The provincial government and Treaty Commission of Ontario should also work with local governments and school boards, First Nations, and community organizations to develop educational materials and strategies that emphasize the local or regional character of treaty relationships.
30. The Ministry of Education should establish formal working relationships with Aboriginal organizations to promote more Aboriginal perspectives and content in the elementary and secondary school curricula.
31. The Ministry of Education and Treaty Commission of Ontario should work with Aboriginal organizations, school boards, and teachers associations to develop appropriate, classroom-ready teaching tools and resources about Aboriginal history, treaty and Aboriginal rights, and related current events.
32. The provincial government should create a Ministry of Aboriginal Affairs. This ministry should have a dedicated minister and its own deputy minister.
33. The provincial government should create the appropriate Cabinet structure to support the new ministry. The provincial government should consider establishing a new Cabinet committee on Aboriginal Affairs and should consider including the Minister of Aboriginal Affairs on the Priorities and Planning Board of Cabinet.
34. The initial mandate and responsibilities of the Ministry of Aboriginal Affairs should include the following:
 - a. administer and support a revitalized land claims process in Ontario.
 - b. create and support a Treaty Commission of Ontario.
 - c. ensure that the province fulfills its duty to consult and accommodate.
 - d. improve Aboriginal/non-Aboriginal community relationships.

- e. establish the Ontario Aboriginal Reconciliation Fund.
 - f. oversee and report on the implementation of the recommendations of the Ipperwash Inquiry.
35. The provincial government should commit sufficient resources to the Ministry of Aboriginal Affairs to enable it to carry out its responsibilities. The budget for the ministry should include funding for a revitalized land claims process in Ontario, for the Ontario Aboriginal Reconciliation Fund, and for programs to improve Aboriginal/non-Aboriginal relations in Ontario.
 36. The provincial government and Ministry of Aboriginal Affairs should create mechanisms for obtaining input from Aboriginal communities on planning, policy, legislation, and programs affecting Aboriginal interests.
 37. The provincial government should establish and fund an Ontario Aboriginal Reconciliation Fund. The Ministry of Aboriginal Affairs should work with First Nations and Aboriginal organizations to determine the mandate, governance structure, funding guidelines, and administrative structure of the fund. The provincial government should commit sufficient resources to the fund to enable it to achieve its objectives.
 38. Police services in Ontario should promote peacekeeping by adopting the following objectives when policing Aboriginal occupations and protests:
 - a. minimize the risk of violence at occupations and protests.
 - b. preserve and restore public order.
 - c. facilitate the exercise of constitutionally protected rights.
 - d. remain neutral as to the underlying grievance.
 - e. facilitate the building of trusting relationships that will assist the parties to resolve the dispute constructively.
 39. The OPP should maintain its Framework for Police Preparedness for Aboriginal Critical Incidents, Aboriginal Relations Teams, and related initiatives as a high priority and devote a commensurate level of resources and executive support to them.
 40. The OPP should commission independent, third-party evaluations of its Framework for Police Preparedness for Aboriginal Critical Incidents and Aboriginal Relations Team program. These evaluations should include

significant and meaningful participation by Aboriginal representatives in their design, oversight, and analysis.

41. The OPP should post all significant OPP and provincial government documents and policies regarding the policing of Aboriginal occupations and protests on the OPP website. The OPP should also prepare and distribute an annual report on the Framework for Police Preparedness for Aboriginal Critical Incidents.
42. The OPP should establish a formal consultation committee with major Aboriginal organizations in Ontario.
43. The OPP should develop a consultation and liaison policy regarding non-Aboriginal communities which may be affected by an Aboriginal occupation or protest. This policy should be developed in consultation with local non-Aboriginal communities and should be distributed to local officials and posted on the OPP website.
44. The OPP should develop a strategy to restore relationships with both Aboriginal and non-Aboriginal communities after an Aboriginal occupation or protest. The provincial, federal, and municipal governments should support and participate in this strategy. This strategy should be distributed to interested parties and posted on the OPP website.
45. The provincial government should develop a provincial peacekeeping policy to govern its response to Aboriginal occupations and protests. The policy should publicly confirm the provincial government is committed to peacekeeping, and it should promote consistency and coordination between the provincial government and police services in Ontario. This policy should include:
 - a. a ministerial directive from the Minister of Community Safety and Correctional Services to the OPP confirming peacekeeping as the provincial government policy during an Aboriginal occupation or protest. The directive should acknowledge and support the general purposes and practices of the OPP Framework for Police Preparedness for Aboriginal Critical Incidents; and,
 - b. a ministerial guideline from the Minister of Community Safety and Correctional Services to other police services in Ontario, functionally equivalent to the OPP directive but allowing for adaptation to local circumstances.

The provincial peacekeeping policy should state that it is applicable to the Ministry of Community Safety and Correctional Services, the OPP, the Ministry of Natural Resources, and any other ministries or agencies which may be involved in an Aboriginal occupation or protest.

The provincial peacekeeping policy should be promulgated as soon as practical. The Ministry of Community Safety and Correctional Services should then initiate a consultation process with First Nations, the OPP, other police services, and local communities as appropriate regarding the scope and content of a longer-term policy.

46. The provincial government should commit sufficient resources to the OPP to support its initiatives for policing Aboriginal occupations. This funding should be dependent upon the OPP agreeing to commission and publish independent evaluations of the Framework for Police Preparedness for Aboriginal Critical Incidents and the Aboriginal Relations Team program.
47. The provincial government should develop a policy governing the use of injunctions at Aboriginal occupations and protests. The policy should state that its purpose is to promote peacekeeping in Aboriginal occupations and protests. The policy should acknowledge the unique role of the Attorney General in injunction proceedings and commit the province to participating in proceedings where private landowners seek an injunction and treaty and Aboriginal rights may be affected.
48. The OPP should have the right to be represented separately in injunction proceedings. The provincial government should facilitate court-appointed counsel for interested parties in injunction proceedings if their participation would contribute to the court's understanding of the issues in dispute.
49. Interministerial "blockade" committees should be organized carefully to ensure that they respect ministerial accountability. These committees should be briefed on the following matters:
 - a. appropriate roles and responsibilities of police and government;
 - b. existing provincial government and police peacekeeping policies;
 - c. general aspects of police strategy and objectives when policing Aboriginal occupations and protests;
 - d. the unique constitutional status of Aboriginal rights and claims, and the constitutional right of peaceable assembly; and,

- e. the history, issues, and claims that may be in dispute.

Relevant ministers, ministerial staff, and other senior provincial officials should also be briefed on these issues.

50. The provincial government should adopt a flexible policy regarding negotiations with protesters during an Aboriginal occupation or protest. The factors to be considered should include:
 - a. a realistic assessment of the claim asserted by the protesters;
 - b. risks to public safety;
 - c. the willingness or capacity of protesters or the First Nation to negotiate;
 - d. the likelihood of a constructive, peaceful, timely agreement;
 - e. the social or economic disruption caused by the occupation; and,
 - f. any other relevant factors.
51. Federal, provincial, municipal, and First Nation governments should actively promote public education and community information about significant Aboriginal protests. The OPP should also actively promote public education and community information.
52. The federal government should publicly commit to working with the provincial government during Aboriginal occupations or protests in Ontario, cooperatively and with a shared commitment to settling underlying disputes. The federal government should generally assume the lead responsibility in negotiations when land claims are at stake.
53. The provincial government, First Nations organizations, the OPP, and other police services in Ontario should develop networks promoting communication, understanding, trust, and collaboration during Aboriginal occupations and protests. The following elements should be included in this effort:
 - a. The OPP and First Nations organizations in Ontario should develop public safety, communications, and/or operational protocols.
 - b. The OPP and First Nations police services should jointly plan for responding to Aboriginal occupations and protests. Existing protocols between the OPP and First Nation police services should be amended to include references to occupations and protests.

- c. The provincial government, the OPP, and representatives from municipal police services should develop resources, practices, or protocols to assist municipal police services during Aboriginal occupations and protests in urban areas.
 - d. The OPP and the Ministry of Natural Resources should develop an operational protocol consistent with the purposes and practices in the OPP Framework for Police Preparedness for Aboriginal Critical Incidents.
 - e. The OPP should provide crisis negotiator training to First Nations police services.
54. The OPP and other police services should provide verified information to the media in their news releases. Inaccurate information should be corrected promptly and publicly.
55. The Ministry of Community Safety and Correctional Services should bring together interested parties to discuss the Tactical Emergency Medical Support and civilian emergency medical services issues in this report, including the advice and recommendations of the Office of the Chief Coroner.
56. The federal and provincial governments should update their policies on First Nation policing to recognize that self-administered First Nation police services in Ontario are the primary police service providers in their communities.
57. The provincial government, OPP, and First Nation police services should work together to identify how the provincial government can support First Nation police services to be as effective as possible when policing Aboriginal occupations and protests, either within their own territories or in support of the OPP or other police services in Ontario. The OPP and First Nation police services should engage in joint planning and training for Aboriginal occupations and protests and existing protocols should refer to occupations and protests.
58. Federal, provincial, and First Nation governments should commit to developing long-range plans for First Nation policing in Ontario.
59. Federal, provincial, and First Nation governments should commit to developing a secure legislative basis for First Nation police services in Ontario.

60. The provincial government should work with the Nishnawbe Aski Nation, the Nishnawbe-Aski Police Services, and other First Nations in Ontario as appropriate to develop a “made in Ontario” legislative or regulatory framework for First Nation policing in Ontario. The provincial government should also amend the *Police Services Act* to allow First Nation police services or boards to appoint their own officers.
61. The provincial government, First Nation police services, and the OPP should establish an Ontario First Nation Chiefs of Police Association.
62. The federal and provincial governments should increase capital and operational funding for First Nation police services in Ontario. This funding should be secured by renewable, five-year agreements between the federal, provincial, and First Nation governments.
63. The OPP should maintain its Native Awareness Training and related police/Aboriginal relations initiatives as a high priority and devote a commensurate level of resources and executive support to them.
64. The OPP should develop active, ongoing monitoring strategies for its police/Aboriginal relations strategy and programs, including:
 - a. commissioning an independent, third-party evaluation of its Native Awareness Training and recruitment initiatives;
 - b. commissioning data collection studies to evaluate police decision-making and operations. These studies should be designed in partnership with First Nation organizations and the Ontario Provincial Police Association, if possible; and
 - c. working with First Nations organizations to develop a more formal monitoring and implementation program for the OPP police/Aboriginal programs.
65. The provincial government should develop a provincial police/Aboriginal relations strategy. This strategy should publicly confirm the commitment by the province to improving police/Aboriginal relations in Ontario. Elements of this strategy should include the following:
 - a. The Ministry of Community Safety and Correctional Services should work with the OPP and Aboriginal organizations to develop a provincial policy supporting the OPP police/Aboriginal relations programs.

- b. The Ministry of Community Safety and Correctional Services should work with the OPP, Aboriginal organizations, other police services, and the Ontario Human Rights Commission to identify and circulate best practices in police/Aboriginal relations.
 - c. The Ministry of Community Safety and Correctional Services should develop a provincial research and data collection strategy to promote improved police/Aboriginal relations policy and programs and bias-free policing across Ontario.
 - d. The Ministry of Community Safety and Correctional Services should issue a guideline for police forces in Ontario promoting best practices in police/Aboriginal relations.
 - e. The Ministry of Natural Resources should develop and implement a dedicated MNR/Aboriginal relations strategy, consistent with the analysis and recommendations in this report.
66. The provincial government should commit sufficient resources to the OPP to support its police/Aboriginal relations initiatives. This funding should be dependent upon agreement by the OPP to commission and publish independent evaluations of its Native Awareness Training and recruitment initiatives.
 67. Bill 103, the *Independent Police Review Act, 2006*, should be reviewed to ensure that internally generated complaints related to a police service are handled by the Independent Police Review Director, including complaints relating to racism and other culturally insensitive behaviour.
 68. The Independent Police Review Director should determine the most appropriate policy to be followed by his or her office and police services in Ontario in handling complaints of misconduct involving racism and other culturally insensitive conduct, including the role, if any, for informal discipline. The Independent Police Review Director should consult with community and Aboriginal organizations when developing this policy.
 69. The Ministry of Community Safety and Correctional Services should issue a directive to all police services in Ontario, including the OPP, requiring police officers to report incidents of racism or other culturally insensitive behaviour by other officers to their supervisors.
 70. The OPP should establish an internal process to ensure that racist and other culturally insensitive behaviour by police officers is dealt with publicly.

The OPP should also determine the most appropriate policy for handling complaints of misconduct involving racism and other culturally insensitive conduct, including the role, if any, for informal discipline.

71. Section 17 of the *Police Services Act* should be amended to specify that the power of the responsible minister to direct the OPP does not include directions regarding specific law enforcement decisions in individual cases, notwithstanding the responsible minister's authority to issue directives under s. 3(j) of the *Act*. This section should be further amended to specify that the commissioner of the OPP has "operational responsibility with respect to the control of the OPP, subject to written directives from the responsible minister."
72. The *Police Services Act* should be amended to prohibit anyone but the responsible minister (or his or her delegate) from providing directions to the OPP. The *Act* should also specify that ministerial directions must be directed to the commissioner of the OPP (or his or her delegate).
73. A regulation should be issued under the *Police Services Act* specifying the procedure for issuing, circulating, and withdrawing ministerial directives. This regulation should specify that
 - a. all ministerial directives are to be in writing, subject to the limited exception of an extraordinary or exigent circumstance which prevents the directive from being written down. In these situations, the directive must be issued in writing at the earliest opportunity; and
 - b. all ministerial directives should be publicly accessible, including being published in the *Ontario Gazette*, posted on the Ministry of Community Safety and Correctional Services website, and available to the public upon request within seven days of being issued. This provision is subject to the limited exception that the publication/circulation of the directive should be delayed if it would affect public safety or the integrity of an ongoing police operation. In these situations, the directive should be published/circulated at the earliest opportunity.
74. The regulation should also specify that
 - a. the commissioner of the OPP should refuse to consider a government direction which is not in writing or not intended to be made public;
 - b. the responsible minister does not have the authority to offer "guidance" as opposed to "direction" to the commissioner of the OPP; and

- c. government intervention with respect to “policies of operations” must be in the form of a written ministerial directive.

75. The OPP should post relevant ministerial directives on its website, circulate them to the OPP advisory committees, and make them available to the public upon request.
76. The Ministry of Community Safety and Correctional Services and the OPP should adopt complementary formal policies that set out their respective roles, responsibilities, and mutual expectations in police/government relations. These policies should adopt the principles and findings on police/government relations outlined in this report, including specific provisions on the following issues:
 - the core of “police independence”
 - the “policy of operations”
 - police operational responsibilities
 - government policy responsibilities
 - information exchanges between police and government
 - dedicated procedures that will be used to manage police/government relations during a critical incident

All senior officials within the Ministry of Community Safety and Correctional Services and the OPP should be briefed or trained on these policies. Other government officials should be briefed as necessary. These policies should also be posted on the Ministry of Community Safety and Correctional Services and OPP websites and be made publicly available upon request.

77. The OPP should establish policies and procedures to insulate operational decision-makers, incident commanders, and front-line officers from inappropriate government direction or advice.
78. The Ministry of Natural Resources should develop a policy respecting ministerial directives to its conservation officers which is consistent with the principles and findings on police/government relations generally as set out in this report.

INQUIRY PROCESS

1. The Ministry of the Attorney General should create a permanent secretariat or repository of administrative expertise and best practices related to public inquiries to provide more comprehensive operational support and guidance to commissioners and administrative staff.
2. The Ministry of the Attorney General should provide administrative and technical assistance for the production of the final report of a commission of inquiry, thereby enabling the commission to focus on the content. This would include identifying and engaging contractors for translation, design, typesetting, printing, and production in electronic format.

